

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

VOTER REFERENCE FOUNDATION, LLC,)
)
)
Plaintiff,)
v.)
)
	CASE NO: 1:22-cv-00222-JB-KK
)
RAÚL TORREZ, in his official capacity as New Mexico Attorney General,)
)
and)
)
MAGGIE TOULOUSE OLIVER, in her Official capacity as New Mexico Secretary of State,)
)
Defendants.)

JOINT TRIAL DEPOSITION DESIGNATIONS AND OBJECTIONS

Plaintiff Voter Reference Foundation, LLC (“VRF” or “Plaintiff”) and Defendants Attorney General Raul Torrez and Secretary of State Maggie Toulouse Oliver (“Defendants”), pursuant to the Joint Pretrial Order [Dkt. 152] and D.N.M.LR-Civ. 10.6, designate the following deposition testimony, subject to the listed objections for this Court’s consideration.

Mandy Vigil February 27, 2023		Defendants’ Objection	Plaintiff’s Response
Beginning	Ending		
5:7	6:1		
13:11	13:17		
19:22	20:4		
20:5	21:1		
25:5	25:20		
28:14	29:1		
30:15	30:19		

30:20	31:4		
35:18	36:4		
52:23	53:13		
54:24	55:6		
55:17	55:24		
55:25	56:7		
56:8	56:13		
57:3	57:22		
65:23	65:25		
72:17	73:1		
74:9	75:6		
75:22	76:9		
76:10	78:19	77:23 Misstates prior testimony, foundation; 78:12 foundation: The question posed at 77:17-22 purports to restate Ms. Vigil's prior testimony but does not do so.	VRF's question clarifies Mrs. Vigil's testimony and gives her an opportunity to respond-it does not purport to restate prior testimony verbatim. To the extent that Mrs. Vigil felt the question did not accurately state the Secretary's position, she was invited to explain.
79:11	80:5		
82:11	82:12		
83:1	83:2		
84:9	84:12		
84:13	85:11		
88:17	89:24	89:18 Relevance: Hypothetical and counterfactual questions are not relevant. VRF's burden is to produce evidence of actual disparate treatment, not hypothetical disparate treatment.	The testimony in this excerpt concerns hypothetical situations which shed light on the Secretary of State's positions regarding the sharing of voter data. These positions are highly relevant to VRF's First Amendment claims because they show the Secretary's reasons for denying VRF's requests for New Mexico voter data are pretextual. Additionally, the Secretary's answers to these questions are relevant to VRF's vagueness and overbreadth claims because they show the deficiencies of the Data Sharing Ban.
93:17	94:1		
97:19	98:11	98:4 Relevance:	The testimony in this excerpt concerns hypothetical situations which shed light on the Secretary

		Hypothetical and counterfactual questions are not relevant. VRF's burden is to produce evidence of actual disparate treatment, not hypothetical disparate treatment.	of State's positions regarding the sharing of voter data. These positions are highly relevant to VRF's First Amendment claims because they show the Secretary's reasons for denying VRF's requests for New Mexico voter data are pretextual. Additionally, the Secretary's answers to these questions are relevant to VRF's vagueness and overbreadth claims because they show the deficiencies of the Data Sharing Ban.
99:22	101:16	100:1 Relevance; 100:12 Relevance; 101:3 Relevance: There is no agreement that must be signed, there is a click-through. VRF has not raised as a defense to violations of the election code that the click-through shields them from criminal liability, nor have Defendants insinuated as much.	This testimony concerns the contents of VRF's website and the agreement users must sign in order to view voter data on VRF's website. As such, it is highly relevant to Defendants' purported justifications for denying VRF's requests for New Mexico voter data.
102:13	102:18		
105:7	105:11		
106:24	107:6		
108:4	108:17		
109:11	110:6		
110:7	111:6		
112:1	112:5		
113:6	113:22		
113:23	114:13	114:6 Calls for speculation; Relevance: The question asks for a legal opinion regarding a hypothetical invented by counsel.	The referenced question asks for the Secretary of State's knowledge of the legality of other entities' use of voter data which is highly relevant to showing that the Secretary of State's reasons for denying VRF's requests for New Mexico voter data are pretextual.
116:6	117:3		

118:5	118:16		
119:19	120:1		
121:2	121:17		
121:18	122:6	121:21 Calls for speculation; Relevance: The question was “maybe one day somebody will check out one of the websites and understand what they do with their data.” This calls for speculation about the both the identity of the investigator and the presumed result of the investigation.	This questioning concerns what is necessary for the Secretary of State’s office to conduct an investigation into an entity for violating the election code. If the Secretary of State does not know and must “speculate,” that is relevant to show that the Secretary of State’s office is not treating all entities requesting voter data equally.
122:18	122:22		
123:12	124:16		
124:24	125:13		
126:9	127:4		
128:19	129:6		
129:7	129:17		
129:24	130:4		
130:12	130:19		
134:8	134:23		
134:24	135:9		
135:10	135:14		
135:15	136:2		
136:8	138:17		
140:19	140:22		
140:23	141:13		
143:9	143:24		
144:1	144:24		
145:23	146:4		
146:5	149:2		
151:4	151:12		
151:13	152:20		
152:21	152:24		
154:22	155:8		
157:14	157:21		
158:4	158:11		
163:12	164:22		
168:24	170:1		
170:2	170:11		

172:23	174:7		
174:8	174:20		
174:21	175:17		
178:21	179:20		
179:21	180:16		
180:17	181:15		
182:17	184:3		
184:21	186:18		
187:11	187:15		
187:21	188:23		
188:24	189:6		
190:1	190:5		
190:6	191:13		
194:25	195:25		
197:8	197:20	<p>Improper form: commentary of counsel, not a question:</p> <p>All objections other than to form and foundation are preserved. If VRF wished to have all objections raised and resolved as they arose during testimony, VRF could have done so. Having failed to do so, VRF is not permitted to enter as evidence extensive commentary of counsel.</p>	<p>Defendants failed to apprise VRF of the reason for their objection during the deposition, thereby depriving VRF of a chance to cure any perceived infirmities with that question. As such, this objection is waived.</p> <p>Defendants' acknowledge that objections to form are not preserved.</p> <p>Additionally, there is no such federal "trial deposition" rule which Defendants seem to invoke.</p>
198:6	198:8		

Mandy Vigil, February 27, 2023 Defendants' Designations	
Begin	End
74:5	74:8
136:16	137:20
192:8	192:20



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Mandy Vigil

February 27, 2023

Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

<p style="text-align: right;">Page 2</p> <p>1 A P P E A R A N C E S 2 3 FOR THE PLAINTIFF: 4 Mr. Edward D. Greim 5 Mr. Jackson Tyler 6 GRAVES GARRETT, LLC 7 1100 Main Street, Suite 2700 8 Kansas City, Missouri 64105 9 816.256.3181 10 edgreim@gravesgarrett.com 11 FOR THE DEFENDANTS: 12 Ms. Erin Lecocq 13 Ms. Kelsey Schremmer 14 Office of the New Mexico Attorney General 15 408 Galisteo Street 16 Santa Fe, New Mexico 87501 17 505.490.4060 18 elecocq@nmag.gov 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 (Continued.) 2 3 I N D E X O F E X H I B I T S 4 5 Deposition Exhibit No.: 6 9- November 17, 2022 e-mail string... 180 7 10- House Bill 4..... 202 8 11- Agency Bill Analysis, 2022 9 Regular Session..... 211 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 3</p> <p>1 I N D E X O F E X A M I N A T I O N 2 Page 3 DIRECT EXAMINATION..... 5 4 Questions by Mr. Greim 5 I N D E X O F E X H I B I T S 6 7 Page 8 Deposition Exhibit No.: 9 1- Amended Notice of Deposition..... 6 10 2- Response of Defendant Secretary of 11 State Maggie Toulouse Oliver, in 12 her Official Capacity, to Plaintiff 13 Voter Reference Foundation's Third 14 Interrogatories and Requests for 15 Production..... 9 16 3- Morgan Lee article titled 17 "New Mexico challenges effort to 18 post voter rolls online."..... 40 19 4- December 20, 2021 letter to Anne 20 Kelly from Sharon Pino with 21 attachments..... 51 22 5- February 21, 2023 e-mail string... 85 23 6- Response of Defendant Secretary of 24 State Maggie Toulouse Oliver, in 25 her Official Capacity, to Plaintiff Voter Reference Foundation's Second Interrogatories, Requests for Production, and Requests for Admission..... 125 7- March 11, 2022 e-mail string..... 163 8- May 27, 2022 letter to Secretary Toulouse Oliver from Edward Greim with attachments.... 168</p>	<p style="text-align: right;">Page 5</p> <p>1 MANDY VIGIL, 2 having been first duly sworn to tell the truth, 3 the whole truth, and nothing but the truth, 4 testified as follows: 5 DIRECT EXAMINATION, 6 QUESTIONS BY MR. EDWARD D. GREIM: 7 Q. Good morning, Ms. Vigil. Good to see you 8 again. Rather than going through all the 9 background questions, which we've already done 10 with you before, I would just ask you, has -- 11 has anything about your background changed 12 since we last spoke back in the summer of last 13 year? 14 A. No. 15 Q. Okay. You have the same job title? 16 A. I do. 17 Q. You have the same duties? 18 A. I do. 19 Q. No additional classes or expertise since that 20 time? 21 A. No. 22 Q. Okay. Now, I understand that, unlike your 23 prior testimony, you're here today to answer 24 questions on behalf of the secretary of state's 25 office, do you understand that?</p>

2 (Pages 2 to 5)

<p style="text-align: center;">Page 10</p> <p>1 record just real fast?</p> <p>2 MR. GREIM: Okay. Sure.</p> <p>3 (WHEREUPON, at this time a discussion was</p> <p>4 held off the record.)</p> <p>5 BY MR. GREIM:</p> <p>6 Q. So let me ask you, Ms. Vigil, have you studied</p> <p>7 yet the responses to Interrogatories 10</p> <p>8 through 17? Have you seen these responses</p> <p>9 before?</p> <p>10 A. No.</p> <p>11 Q. Okay. So have you -- have you verified their</p> <p>12 accuracy?</p> <p>13 A. No, I haven't.</p> <p>14 Q. Well, then, I think we're going to have to</p> <p>15 wait. You're going to need to read these and</p> <p>16 see if you agree with them. And if you do,</p> <p>17 then, you know, we'll need a sworn response.</p> <p>18 If you don't agree with them, I guess we'll</p> <p>19 need revisions to whatever you want to change.</p> <p>20 A. Okay.</p> <p>21 Q. So you -- you can't tell us that these are</p> <p>22 really the responses of your office, is that</p> <p>23 correct?</p> <p>24 A. Not without reading them.</p> <p>25 Q. Okay. I'm going to direct you to certain</p>	<p style="text-align: center;">Page 12</p> <p>1 A. So the secretary of state's office is</p> <p>2 responsible for maintaining a statewide voter</p> <p>3 registration database, and that includes all of</p> <p>4 the voter data.</p> <p>5 Q. Where does the voter data come from?</p> <p>6 A. Comes from voter registration applications that</p> <p>7 are submitted by an individual and processed by</p> <p>8 a county clerk.</p> <p>9 Q. Okay. Who has access to that database?</p> <p>10 A. All election administrators within the state of</p> <p>11 New Mexico have access, so secretary of state's</p> <p>12 office, there are certain individuals, and</p> <p>13 county clerk offices.</p> <p>14 Q. Does anyone else have access to the database,</p> <p>15 like a code to get in and view information or</p> <p>16 alter data?</p> <p>17 A. No.</p> <p>18 Q. But I ask you that, it may seem like an odd</p> <p>19 question, but in some states they give out</p> <p>20 something that they call key codes or things</p> <p>21 like that, they give out a certain number of</p> <p>22 those. And that's within the discretion of the</p> <p>23 county clerk to then distribute those. So</p> <p>24 not -- not everybody who gets them is actually</p> <p>25 a government official. So my question is, do</p>
<p style="text-align: center;">Page 11</p> <p>1 statements in here as we go and I'm going to</p> <p>2 ask for your position on these. Let me ask</p> <p>3 you, during your prep for today, you did not</p> <p>4 review these responses?</p> <p>5 A. I have not reviewed these yet, no.</p> <p>6 MR. GREIM: Okay. We're back on record,</p> <p>7 correct?</p> <p>8 THE COURT REPORTER: Yeah.</p> <p>9 BY MR. GREIM:</p> <p>10 Q. Okay. Well, I'll just ask you about certain</p> <p>11 things in here and we'll see if you agree, and</p> <p>12 if you don't, we'll just -- we'll just revisit</p> <p>13 it. But this will be the fastest way, I think,</p> <p>14 to handle this. And I know they look like</p> <p>15 they're long, but most of these start with an</p> <p>16 objection and then the answer starts lower</p> <p>17 down.</p> <p>18 And so I'm not going to take you through</p> <p>19 the objection. I'm going to focus on the</p> <p>20 provision of actual information here. But I'm</p> <p>21 glad we did that here at the outset. Let's put</p> <p>22 these aside. We'll come back to them in a</p> <p>23 little bit when we get into specific topics.</p> <p>24 Let me just ask you, what's the secretary</p> <p>25 of state's role in collecting voter data?</p>	<p style="text-align: center;">Page 13</p> <p>1 you know if that happens in New Mexico?</p> <p>2 A. No.</p> <p>3 Q. Did you --</p> <p>4 A. It does not happen in New Mexico.</p> <p>5 Q. It does not happen. Okay. Now, what about --</p> <p>6 how does voting information get into the</p> <p>7 database? By that I mean whether someone casts</p> <p>8 a vote in an election.</p> <p>9 A. So you're asking, to be clear, on kind of voter</p> <p>10 credit, is that the question?</p> <p>11 Q. It may be. Is a voter credit a record that</p> <p>12 someone voted in a particular election?</p> <p>13 A. Yes. So if a voter participates in an</p> <p>14 election, we assign what's called voter credit</p> <p>15 in New Mexico. And that assignment is</p> <p>16 completed by a county clerk's office. And</p> <p>17 there are system functions that support that.</p> <p>18 Q. What do you mean that there are system</p> <p>19 functions that support that?</p> <p>20 A. So there's data that's exchanged between our</p> <p>21 databases. It's not always a manual process of</p> <p>22 a human making that entry.</p> <p>23 Q. I see. So let's just -- I don't want to go too</p> <p>24 much further, but I just want to understand the</p> <p>25 database. So do you mean that, for example,</p>

<p style="text-align: right;">Page 18</p> <p>1 A. Certainly.</p> <p>2 Q. And that includes -- among all the other things 3 you just mentioned, it includes some voter data 4 from other states?</p> <p>5 A. Yes.</p> <p>6 Q. And New Mexico also shares its own data with 7 ERIC also, right?</p> <p>8 A. We do.</p> <p>9 Q. And that includes data that's in the database 10 that we've just been talking about, right?</p> <p>11 A. It does.</p> <p>12 Q. And I'm going to assume that ERIC does not fill 13 out an affidavit under the statutory process 14 that we're going to get to here in a minute, do 15 they?</p> <p>16 A. We have a membership agreement that we did 17 enter into with ERIC.</p> <p>18 Q. And there's a statute that actually allows for 19 that, right?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. When you receive these list maintenance 22 reports from ERIC, do you retain them?</p> <p>23 A. That -- that's actually a function of our IT 24 department, so -- I know we don't maintain them 25 long-term.</p>	<p style="text-align: right;">Page 20</p> <p>1 has -- that all of this information feeds into, 2 is that correct?</p> <p>3 A. There is one statewide voter registration 4 database.</p> <p>5 Q. Okay. And for any given voter, what does 6 the -- what fields does the database contain?</p> <p>7 A. There are many fields for a voter. Certainly 8 demographic information, so name, date of 9 birth, social security number, in some cases 10 driver's license. We also maintain information 11 such as a party affiliation and any activity on 12 their voter registration record.</p> <p>13 Q. Those would be voter credits?</p> <p>14 A. In part, but also any updates to the 15 information.</p> <p>16 Q. What do you mean updates?</p> <p>17 A. If somebody was married and updated their name, 18 potentially, so we did a registration update.</p> <p>19 Q. I see. So the very fact that there was an 20 update is also tracked within the database?</p> <p>21 A. Correct.</p> <p>22 Q. That's viewed as activity?</p> <p>23 A. Correct.</p> <p>24 Q. And what if they move, is that also kept as 25 activity?</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Can the public request the list maintenance 2 reports?</p> <p>3 A. No.</p> <p>4 Q. They're closed records under New Mexico law?</p> <p>5 A. That is a good question. I would have to 6 double check the exact language of the law. 7 But it's certainly a requirement of our 8 membership agreement.</p> <p>9 Q. Okay.</p> <p>10 A. There's MVD data that's included, and that is 11 protected under federal law as well as SSD -- 12 security --</p> <p>13 Q. What is --</p> <p>14 A. We have MVD data and social security 15 information, so there are separate laws that 16 protect that data.</p> <p>17 Q. What's MVD data?</p> <p>18 A. Sorry, motor vehicle division.</p> <p>19 Q. From other states, right?</p> <p>20 A. Yes.</p> <p>21 Q. And yours, okay.</p> <p>22 By the way, this is probably a 23 fundamental question, but we should just do it 24 now. Tell us, your answers to questions here 25 suggest there's really just one database that</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Updates to their record are logged.</p> <p>2 Q. Now, let me ask you, when someone makes a 3 request for the database, which elements of 4 that data is released -- are released? So 5 we've talked about name, date of birth. Tell 6 me what is released when someone requests a 7 voter file.</p> <p>8 A. So if a person goes through the appropriate 9 process to request a voter file --</p> <p>10 Q. Uh-huh.</p> <p>11 A. -- and we determine that it's for an 12 appropriate use, then voter data that's 13 provided would have requested information as 14 long as it wasn't protected. So the requester 15 has an option to request history, voter 16 history, or not. And they have choices in what 17 data they'd like to obtain. So it is dependent 18 on the request.</p> <p>19 Q. Okay. And -- but what they can never receive 20 is the full date of birth, correct?</p> <p>21 A. Anything that is protected, that's correct.</p> <p>22 Q. They can receive a year of birth?</p> <p>23 A. Yes.</p> <p>24 Q. They can't receive the full social security?</p> <p>25 A. No portion of the social security number.</p>

<p style="text-align: right;">Page 22</p> <p>1 Q. No portion. They can receive the party 2 affiliation?</p> <p>3 A. Yes.</p> <p>4 Q. They can receive the credit information?</p> <p>5 A. They can.</p> <p>6 Q. And they can receive the history of updates, 7 correct or no?</p> <p>8 A. No. That's just not included in a routine data request.</p> <p>9 Q. Okay. Well, are those closed to the public?</p> <p>10 A. I would actually -- I don't know that we've ever received an exact request. So that is something that we'd have to take a look at.</p> <p>11 Q. Okay. We don't need to probe much deeper.</p> <p>12 A. Yeah.</p> <p>13 Q. But I do want to put a bookmark on this in case it becomes relevant later. Nobody has -- no one has ever come to you and said, "I would like to just see the updates that you've made to the records over the last two months"? That's never come in?</p> <p>14 A. If you're asking me in particular about list maintenance.</p> <p>15 Q. Uh-huh.</p> <p>16 A. Is that the question?</p>	<p style="text-align: right;">Page 24</p> <p>1 database," has someone made that request of 2 you?</p> <p>3 A. That's something I'd certainly have to confirm. As I mentioned earlier, it's not an option for a voter data request.</p> <p>4 Q. Okay.</p> <p>5 A. It would not have come through as a data request.</p> <p>6 Q. Okay. At the very least, this is not ringing a bell that this has happened any time recently, correct?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. And then who is in charge of the system, of 9 maintaining the database and then responding to 10 requests?</p> <p>11 A. As far as a voter data request, you know, I'm happy to repeat the process, but I think we've 12 discussed that an affidavit would have to come 13 in.</p> <p>14 Q. Oh, let me stop you. I'm just asking who is in 15 charge. What employee is responsible within 16 the secretary of state's office for list 17 maintenance and fulfilling requests?</p> <p>18 A. So number one, the secretary of state's office 19 does not have the authority to update voter</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. No, I -- let's just stick with my question. 2 I'm not -- maybe we can come back to list 3 maintenance, let's just stick with my question. 4 Is it clear enough or is there something vague 5 about it?</p> <p>6 A. There's something vague about it, I'm sorry.</p> <p>7 Q. Okay. What do I need to specify to help you 8 get --</p> <p>9 A. If you can repeat the question --</p> <p>10 Q. Okay.</p> <p>11 A. -- that will be helpful.</p> <p>12 Q. So let me just ask you: Has anyone ever come 13 to the secretary of state's office, let's just 14 say in the last two years, and said, "I would 15 simply like to see the activity reports" --</p> <p>16 MR. GREIM: I'm sorry, are you able to 17 hear us okay?</p> <p>18 THE COURT REPORTER: Did you say activity 19 reports?</p> <p>20 MR. GREIM: Yes.</p> <p>21 THE COURT REPORTER: Okay. We're good.</p> <p>22 BY MR. GREIM:</p> <p>23 Q. Okay. So has somebody come to you and said, "I 24 would like to see the activity reports for the 25 last three months for, you know, your entire</p>	<p style="text-align: right;">Page 25</p> <p>1 registration records. So, though, we support 2 the function of list maintenance, we do not 3 update voter records directly in our office, by 4 law.</p> <p>5 Q. Okay. Well, let me ask you this: For the 6 functions that the secretary of state's office 7 does control, is there a particular employee 8 who is in charge of that section of the 9 secretary of state's activity?</p> <p>10 A. As far as responding to a request, a general request, you know, we have a team, the Bureau of Elections, who is responsible for responding to constituent inquiries or requests.</p> <p>11 Q. And you're the director of the Bureau of 12 Elections?</p> <p>13 A. Yes.</p> <p>14 Q. Is it fair to say you're the -- you're the 15 person responsible for the process for 16 fulfilling requests?</p> <p>17 A. For the process, yes.</p> <p>18 Q. And to the extent that you have a supporting 19 role regarding list maintenance, that also falls under the Bureau of Elections and falls 20 under you, correct?</p> <p>21 A. It does.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q. Now, let me go back to a few questions ago 2 before we -- we're going to move on in just a 3 second here. 4 I asked you about people requesting 5 updates and then you asked me about list 6 maintenance. So I'm going to ask you: Is it 7 possible to receive, from the secretary of 8 state, list maintenance reports? Is it 9 poss- -- let me rephrase that question. 10 Is it possible for a member of the public 11 to request, from the secretary of state's 12 office, list maintenance reports?</p> <p>13 A. We certainly have information in our database, 14 but as I mentioned, you know, at first like the 15 NVRA processing, list maintenance completed by 16 ERIC, those are county clerk functions.</p> <p>17 Q. So the secretary of state doesn't have the 18 data, you have to go to the county clerk to 19 get it? 20 A. I guess it depends on exactly what data you're 21 asking me about. So that would be helpful to 22 get some clarity.</p> <p>23 Q. Okay. Well, what are examples of data where 24 you would be able to provide the answer to a 25 request for a list maintenance report?</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Let me think. There is opportunities within 2 the statute to request list maintenance data.</p> <p>3 Q. Now, does -- if someone cites the statute and 4 says, "I want this maintenance data," and they 5 ask the secretary of state for it, does the 6 secretary of state have list maintenance data? 7 A. What I can speak to -- you know, not this kind 8 of hypothetical that you're presenting to me, 9 but what I can certainly speak to is that our 10 office would receive any request; we would 11 review the statute; and we would make an 12 analysis on what data was public and provide 13 any data that was public.</p> <p>14 Q. Okay. I understand that you -- you would 15 always do that. But my question is very 16 specific. So there is a statute that says that 17 list maintenance data can be requested, and the 18 NVRA covers this as well. So my question is if 19 somebody comes to the secretary of state, makes 20 a proper request, there's an affidavit, they do 21 everything they're supposed to do, does the 22 secretary of state have list maintenance data 23 that it can produce in response to requests? 24 A. Our office does have list maintenance data that 25 we would be able to produce if we received a</p>
<p style="text-align: right;">Page 27</p> <p>1 A. I think we certainly have access to voter data, 2 as you are clear on. And as far as, you know, 3 efforts completed at the county, we don't have 4 a report that I could just pull. It's data 5 that we have access to, but, again, it's not 6 public facing report.</p> <p>7 Q. So the actual changes to the database in 8 response to an ERIC report happen at the county 9 level? 10 A. Yes.</p> <p>11 Q. And are members of the public able to ask 12 county officials for records of the list 13 maintenance that they undertake based on ERIC 14 reports? 15 A. ERIC data is protected, whether it's asked for 16 at the secretary of state's office or at the 17 county level.</p> <p>18 Q. And I'm not -- let's see if we can 19 differentiate between the actual ERIC data and 20 the record that a change was made based on ERIC 21 data. Do you understand the difference? 22 A. Yes.</p> <p>23 Q. Okay. So can a member of the public ask a 24 county official for a record of changes that 25 were made due to receiving ERIC data?</p>	<p style="text-align: right;">Page 29</p> <p>1 legal request, an appropriate legal request.</p> <p>2 Q. Okay. And the other facts you would need to 3 know on a given request is whether the things 4 that make it a legal request. We'd have to -- 5 we'd have to give you all those facts, about 6 who was requesting and what purpose they were 7 requesting it for and all those things, right? 8 A. I think we're speaking again -- just for 9 clarity, are we speaking about a voter data 10 request submitted or a separate request under 11 NVRA or IPRA?</p> <p>12 Q. Well, I guess I would say this: What if the 13 requester doesn't know whether it's an NVRA 14 request or it's -- it's under your voter data 15 request process and just says, "I would like a 16 voter, you know -- I would like voter list 17 maintenance data." I mean, there's no magic 18 words required to cite the statute. I mean, 19 they're citing the same. And so, I mean, I 20 guess my question back to you is does it matter 21 whether they cite the NVRA or whether they cite 22 your state statute? 23 A. I think that we would have to take any request, 24 review the content, review, you know, the 25 legal -- any statute that applies before we</p>

<p style="text-align: right;">Page 30</p> <p>1 could appropriately respond. That -- that 2 would be our process.</p> <p>3 Q. Okay. We're going to spend a little more time 4 here before we move on. I want to understand 5 this. It sounds to me like in your penultimate 6 answer, you said, well, there are some requests 7 that come in for voter data under our state 8 law. Then there are other requests that come 9 in under NVRA; you're viewing those as two 10 separate groups. Do I understand you 11 correctly?</p> <p>12 A. I don't think they're always two separate 13 groups, but we do receive separate requests, 14 yes.</p> <p>15 Q. Okay. Okay. And you would agree that under 16 the NVRA, I mean, you have to provide voter 17 list maintenance data when someone makes a 18 request under the NVRA, correct?</p> <p>19 A. I agree.</p> <p>20 Q. And does someone making that request have to 21 follow the voter data request statutes under 22 New Mexico law and use the required affidavit 23 of the secretary of state's office?</p> <p>24 A. Yes. Anytime a requester is asking us to 25 receive voter data, state law requires that</p>	<p style="text-align: right;">Page 32</p> <p>1 think it -- let me just make sure I'm right 2 about this. Yeah. Statements that are made 3 either by the secretary or her agents regarding 4 VRF, request for or uses of voter data, or this 5 lawsuit.</p> <p>6 And so let me ask you before we turn in 7 to this topic, what did you do to prepare for 8 yourself for that today?</p> <p>9 A. I did not do anything in particular to prepare 10 for the item.</p> <p>11 Q. Okay. Well, let's just charge into it. Would 12 you agree that any statement that gets issued 13 by the office is made with the approval of the 14 secretary of state?</p> <p>15 A. What I can speak to is that process within the 16 secretary of state's office is that we 17 certainly -- you know, as a leadership team we 18 meet, we speak about current events within the 19 office. And we speak to any sort of messaging 20 that's appropriate for what's currently going 21 on. So certainly there's an understanding of 22 the correct and appropriate message, but there 23 is not a particular approval of each statement 24 made.</p> <p>25 Q. Who's in this leadership team that meets to</p>
<p style="text-align: right;">Page 31</p> <p>1 they complete the affidavit.</p> <p>2 Q. And voter list maintenance data is voter data, 3 correct?</p> <p>4 A. Voter list maintenance is voter data, yes.</p> <p>5 Q. Okay. Okay. Would you agree with me that 6 personal voter data are things like name of the 7 voter or the birth year for the voter, data 8 that specifically ties to an individual voter, 9 if I use the term personal voter data?</p> <p>10 A. That term is not defined, to my knowledge.</p> <p>11 Q. Okay.</p> <p>12 MS. SCHREMMER: Are you asking her to 13 define a term for you, or are you telling her 14 the term you're about to use in your 15 questioning?</p> <p>16 MR. GREIM: No, I was asking her.</p> <p>17 BY MR. GREIM:</p> <p>18 Q. So if I just said personal voter data, that 19 means nothing to you whatsoever? It's 20 completely useless as a descriptor of types of 21 data in the voter database?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Okay. I'm going to shift gears here for 24 a second. One of our topics for today is just 25 the secretary's public statements about -- I</p>	<p style="text-align: right;">Page 33</p> <p>1 talk about statements?</p> <p>2 A. I mean, it's any director within the office of 3 the secretary of state's office.</p> <p>4 Q. So that's you?</p> <p>5 A. Me.</p> <p>6 Q. Alex Curtas?</p> <p>7 A. Alex is our communications director.</p> <p>8 Q. He would always be in those discussions, 9 correct?</p> <p>10 A. Any time there's messaging, Alex is 11 participating, yes.</p> <p>12 Q. Okay. The secretary?</p> <p>13 A. Yes, as far as that group.</p> <p>14 Q. Sharon Pino?</p> <p>15 A. Yes. Dylan Lange.</p> <p>16 Q. Who else?</p> <p>17 A. I don't know that anyone else is relevant to 18 this topic, but we also have our director of 19 our business services, and our deputy directors 20 participate in those weekly leadership calls.</p> <p>21 Q. Oh, I see. Those are phone calls?</p> <p>22 A. Or meetings.</p> <p>23 Q. Let me ask you: Who -- I assume that before a 24 statement goes out, there's a draft prepared 25 and people have a chance to look at it?</p>

<p style="text-align: right;">Page 34</p> <p>1 A. That is true in some instances but not always.</p> <p>2 Q. Okay. Who usually prepares the draft of the</p> <p>3 statement?</p> <p>4 A. Alex.</p> <p>5 Q. And then it gets -- do you communicate by</p> <p>6 e-mail, or does he prepare a memo that gets</p> <p>7 given around the office, you know, physically?</p> <p>8 How does he communicate that to the team?</p> <p>9 A. Yeah, it depends. So it depends on what – you</p> <p>10 know, the timeline of what needs to get</p> <p>11 accomplished. It depends on availability. So</p> <p>12 it – I'm happy to speak to a certain instance.</p> <p>13 But generally Alex is the primary source for</p> <p>14 any communication from our office. There is a</p> <p>15 team that participates in kind of ensuring that</p> <p>16 our messaging is correct. But Alex, at the end</p> <p>17 of the day, executes those messages.</p> <p>18 Q. Let's go back to the Exhibit 2, because we</p> <p>19 tried to get the answer to this question by</p> <p>20 interrogatory. If you could go to page 10,</p> <p>21 it's Interrogatory Number 16. I sure wish she</p> <p>22 would have stapled these. I know, this was my</p> <p>23 fault, I meant to say clip and then staple the</p> <p>24 individual. Okay. So Number 16 says,</p> <p>25 "Identify each person involved in drafting,</p>	<p style="text-align: right;">Page 36</p> <p>1 and that we are all clear and on the same page</p> <p>2 as to what that message is. And so I agree</p> <p>3 that they would have knowledge of, generally,</p> <p>4 our message to the public.</p> <p>5 Q. Okay. Now, of course, this is a really</p> <p>6 specific interrogatory. I'm not just asking</p> <p>7 about your process always. We were trying to</p> <p>8 find out about statements to the media relating</p> <p>9 to VRF or the lawsuit that were made by the</p> <p>10 secretary or by Alex Curtas. We've got those,</p> <p>11 okay. So I want you to limit it to that. All</p> <p>12 right.</p> <p>13 And so here is my question: I mean, do</p> <p>14 you agree with the statement that's typed up as</p> <p>15 the response here, or would you change it?</p> <p>16 A. I think it would be helpful is to understand,</p> <p>17 you know, the exact message that we're speaking</p> <p>18 about. I agree that Alex would have drafted.</p> <p>19 I agree that there would have been</p> <p>20 conversations supporting the message and</p> <p>21 clarity as to our position on this lawsuit and</p> <p>22 our public messaging. As far as each</p> <p>23 individual, you know, statement, it would be</p> <p>24 important to understand what statement I'm</p> <p>25 answering to.</p>
<p style="text-align: right;">Page 35</p> <p>1 revising, approving, and sending each public</p> <p>2 statement or statement to a member of the media</p> <p>3 relating to VRF or relating to the lawsuit that</p> <p>4 was made by (i) the secretary, and (ii) Alex</p> <p>5 Curtas." That's the request.</p> <p>6 Then the response, "Subject to, and</p> <p>7 without waiving objections, the secretary</p> <p>8 states Alex Curtas, the communications</p> <p>9 director, drafted public statements or</p> <p>10 statements to a member of the media relating to</p> <p>11 VRF or this lawsuit, which would have been</p> <p>12 approved by Sharon Pino or the secretary.</p> <p>13 Ultimately, the secretary makes the final</p> <p>14 decision with respect to what information is</p> <p>15 provided in a public statement."</p> <p>16 Did I read that correctly?</p> <p>17 A. Let me just read it again.</p> <p>18 Q. Sure. My question is going to be whether you</p> <p>19 agree with that response.</p> <p>20 A. To be clear, my answer to your question is that</p> <p>21 we do have a process and we do participate as a</p> <p>22 leadership team. And I agree that the</p> <p>23 secretary or the deputy secretary of state will</p> <p>24 always be involved in messaging; meaning that</p> <p>25 we are providing the appropriate public message</p>	<p style="text-align: right;">Page 37</p> <p>1 Q. I see. So you -- so the very last sentence is</p> <p>2 the one that's most important to me and that</p> <p>3 could save us some time if it were true. It</p> <p>4 says, "Ultimately, the secretary makes the</p> <p>5 final decision with respect to what information</p> <p>6 is provided in a public statement." Is that</p> <p>7 true?</p> <p>8 A. And I think it's, to be clear, as far as the</p> <p>9 statement, the message, the response, that is</p> <p>10 true. As far as the exact words in a media</p> <p>11 release, it would be something that we'd have</p> <p>12 to look at each individual request. I agree</p> <p>13 that she would certainly participate in the</p> <p>14 decision about the public message and that Alex</p> <p>15 would have drafted it. Ultimately, yes, she</p> <p>16 has an understanding and would approve our</p> <p>17 public message. I am not speaking to each</p> <p>18 individual statement and each word in that</p> <p>19 statement.</p> <p>20 Q. Okay. Well, what about with respect to what</p> <p>21 information is provided in a public statement,</p> <p>22 do you agree that the secretary makes the final</p> <p>23 decision on what information is provided in a</p> <p>24 public statement?</p> <p>25 A. And when you say "information," can you</p>

<p style="text-align: center;">Page 50</p> <p>1 on. I didn't hear, I missed a part of it. And 2 the fact that voters would be intimidated and 3 cause them to what? To want to -- 4 THE WITNESS: To de-register and not 5 participate in our process. That is a fact 6 that our office was contacted by voters with 7 those exact concerns and requests. 8 MR. GREIM: I move to strike that answer 9 as non-responsive. 10 BY MR. GREIM: 11 Q. Okay. Let's just move on to some other topics 12 here. Well, let me ask you this: I may -- 13 A. May I ask for a restroom break? 14 MR. GREIM: Yeah, why don't we. We've 15 been going for a little while. 16 Okay. We're going to go off the record 17 for five to ten minutes and come back and keep 18 charging ahead. 19 (WHEREUPON, at this time a brief recess 20 was taken.) 21 MR. GREIM: Before we begin -- resume 22 questioning of the witness, we just have a 23 stipulation to enter onto the record. And why 24 don't you -- since you're the stipulator, why 25 don't you say it.</p>	<p style="text-align: center;">Page 52</p> <p>1 THE COURT REPORTER: Posting of what? 2 Q. Okay. And who -- 3 THE WITNESS: I'm sorry, posting online. 4 BY MR. GREIM: 5 Q. Okay. And this was signed by Sharon Pino, 6 correct? 7 A. It is. 8 Q. And you were present when I questioned Ms. Pino 9 some months ago about this referral, do you 10 recall that? 11 A. I was present? 12 Q. Well, actually, maybe you weren't, because it 13 was on my -- you may not have been around for 14 that. Okay, we'll strike that. 15 Now, we have asked the secretary of state 16 who participated in the decision to make this 17 referral. Okay, so keep your finger on 18 Exhibit 4, but go back please to Exhibit 2, the 19 interrogatory responses. And turn to page 8, 20 please. We're going to go between pages 8 and 21 9. 22 A. Okay. 23 Q. And we asked the secretary to identify each 24 person who participated in the decision to make 25 a criminal referral of VRF, and the person, if</p>
<p style="text-align: center;">Page 51</p> <p>1 MS. LECOCQ: Sure. The State is 2 stipulating -- well, I'll just let you do it. 3 MS. SCHREMMER: In Exhibit 3, and it's 4 physical page 4, there is a quote attributed to 5 Toulouse Oliver that begins, "This is an 6 overtly political purpose." And we're 7 stipulating that we do not have any reason to 8 believe this is a misquote. 9 MR. GREIM: Okay. Thank you very much. 10 BY MR. GREIM: 11 Q. Okay. We're going to shift gears now and we're 12 going to talk a little bit about the criminal 13 referral. So what are we on now, 4? 14 A. Yes. 15 (WHEREUPON, Deposition Exhibit 4 was 16 marked for identification.) 17 BY MR. GREIM: 18 Q. I'm going to hand you what we're marking as 19 Exhibit 4. And I'm going to ask you if you 20 recognize this document. 21 A. I do. 22 Q. What is it? 23 A. This is the referral that our office made to 24 the attorney general's office related to Voter 25 Reference Foundation's posting of the data.</p>	<p style="text-align: center;">Page 53</p> <p>1 any, who made the final decision. And then we 2 asked certain things about each one of those. 3 So that's the question. And then if you turn 4 to page 9, you'll see there's an objection that 5 it's privilege, and then there's a little 6 paragraph at the end that says "Without 7 waiving, and subject to those objections, the 8 secretary states that Sharon Pino, deputy 9 secretary of state, made the decision to make 10 the criminal referral, which was reviewed and 11 approved by the secretary." 12 Now, is that a true statement? 13 A. Yes. 14 Q. Okay. My question is: Who else was involved 15 in the decision? 16 MS. LECOCQ: Objection to the extent that 17 any of this involved discussion with counsel, 18 with Mr. Lange. 19 BY MR. GREIM: 20 Q. Well, my -- okay, let's start with Mr. Lange. 21 Let's get this out of the way. Was Mr. Lange 22 involved in the decision? 23 MS. LECOCQ: Objection. You can go ahead 24 and answer. 25 A. Okay. Yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 BY MR. GREIM:</p> <p>2 Q. Okay. Let's put him to one side. Who else was 3 involved in the decision?</p> <p>4 A. Myself.</p> <p>5 Q. Okay. Who else?</p> <p>6 A. And the Deputy Secretary of State Sharon Pino.</p> <p>7 Q. Okay. And who else?</p> <p>8 A. And the secretary certainly had received a 9 recommendation and did approve.</p> <p>10 Q. Okay. Who else? Alex Curtas?</p> <p>11 A. Not in the decision, no.</p> <p>12 Q. Okay. So how was the decision made? I'm not 13 going to ask you for substance. I just want to 14 know was there an e-mail exchange or one or 15 more e-mail exchanges or text exchanges, or did 16 it happen in a meeting?</p> <p>17 A. It happened in a meeting.</p> <p>18 Q. Okay. And when was that meeting?</p> <p>19 A. I don't have the exact date. It was certainly 20 prior to December 20th of 2021. And it was 21 upon us being made aware that this data, that's 22 when we initiated conversation, once we were 23 aware.</p> <p>24 Q. Okay. Did you receive a complaint?</p> <p>25 A. We did not receive a formal complaint. We did</p>	<p style="text-align: right;">Page 56</p> <p>1 both VoteRef.com and Local Labs have violated 2 the prohibition against 'providing' voter data 3 by posting New Mexican's private voting 4 information online, or in Local Labs' case, 5 providing the voter data to VoteRef.com."</p> <p>6 Is that a true statement?</p> <p>7 A. Yes.</p> <p>8 Q. And then it says, "We also believe that 9 VoteRef.com and Local Labs have 'illegally' 10 used this voter data by publishing it on 11 VoteRef.com."</p> <p>12 Is that a true statement?</p> <p>13 A. Yes.</p> <p>14 Q. All right. Did you recall there being any 15 false statement in Ms. Pino's referral to the 16 secret- -- to the attorney general?</p> <p>17 A. No.</p> <p>18 Q. Before the referral occurred, and set aside 19 Mr. Lange, were there any dissenting voices 20 between Ms. Pino, yourself, and the secretary 21 of state on whether this referral should be 22 sent out?</p> <p>23 A. No.</p> <p>24 Q. Were there any drafts prepared of this 25 referral?</p>
<p style="text-align: right;">Page 55</p> <p>1 receive an inquiry from the media.</p> <p>2 Q. From ProPublica, correct?</p> <p>3 A. From ProPublica.</p> <p>4 Q. ProPublica did not make a complaint against 5 VRF, did it?</p> <p>6 A. No.</p> <p>7 Q. Okay. Let's turn to Exhibit 4. I just want to 8 ask very generally here -- let's go to the 9 conclusion. By the way, I assume you reviewed 10 this document in preparation for your testimony 11 today?</p> <p>12 A. I have not recently reviewed this document.</p> <p>13 Q. Okay. And it sounds like you did not speak 14 with Ms. Pino in preparation for your testimony 15 today?</p> <p>16 A. I did not.</p> <p>17 Q. Well, let's look at the very first line of the 18 conclusion. "Our office believes the transfer 19 and publication of this voter data is in direct 20 violation of the Election Code."</p> <p>21 Did I read that correctly?</p> <p>22 A. You did.</p> <p>23 Q. Is that a true statement?</p> <p>24 A. Yes.</p> <p>25 Q. And then the next sentence, "We believe that</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Who prepared the drafts?</p> <p>3 A. I believe our general counsel did.</p> <p>4 Q. Okay. And is he the one who actually drafted 5 this letter and Ms. Pino signed it?</p> <p>6 MS. LECOCQ: Objection.</p> <p>7 A. I believe our general counsel prepared this and 8 it was reviewed and the final version was 9 signed by Ms. Pino.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Okay. Who -- did certain people suggest edits 12 to this?</p> <p>13 A. Anyone that was part of the decision making, so 14 myself, Ms. Pino, general counsel, would have 15 reviewed and suggested any edits.</p> <p>16 Q. What edits, if any, did you suggest?</p> <p>17 A. I don't recall suggesting any edits.</p> <p>18 Q. What edits did Ms. Pino suggest?</p> <p>19 A. I don't recall if there were any specific 20 edits --</p> <p>21 Q. And what -- okay.</p> <p>22 A. -- throughout the process.</p> <p>23 Q. Okay. Well, it went through several drafts, 24 correct?</p> <p>25 A. I don't know if there were several drafts. I</p>

<p style="text-align: right;">Page 62</p> <p>1 receipt.</p> <p>2 Q. Okay. So did the attorney general ever provide 3 any updates on, you know, what he was or wasn't 4 doing with the referral?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. No, I do not have any status update on any sort 7 of action taken on the criminal referral.</p> <p>8 BY MR. GREIM:</p> <p>9 Q. Okay. Now, I'm not just asking about you; I'm 10 asking about the office. Did the attorney 11 general give any status reports to Ms. Pino or 12 to the secretary or even Mr. Lange about what 13 was going on with the investigation?</p> <p>14 MS. LECOCQ: Objection, and especially 15 with respect to Mr. Lange.</p> <p>16 A. So I am not aware that the office has 17 received -- there is no status updates from the 18 attorney general's office on this criminal 19 matter at this time.</p> <p>20 BY MR. GREIM:</p> <p>21 Q. Okay. At this time, my question is whether 22 there has ever been written or oral updates 23 provided by the AG's office to the secretary of 24 state's office regarding this referral?</p> <p>25 MS. LECOCQ: Objection.</p>	<p style="text-align: right;">Page 64</p> <p>1 state's office on any action being taken on 2 this criminal referral by the attorney 3 general's office.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Okay. And how do you know that to be true?</p> <p>6 A. Because I would have been made aware.</p> <p>7 Q. Did you ask Ms. Pino before today whether she 8 had received any -- any commun- -- let's put 9 aside the term status update for second. Okay. 10 Let's just say any communication at all from 11 the attorney general's office. Let me rephrase 12 this to make it clear for the record.</p> <p>13 Has there been any communication at all 14 from the attorney general's office to the 15 secretary of state's office about this 16 investigation since December 20, 2021?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. So the only thing that I can speak to is that I 19 have asked Ms. Pino and Dylan Lange if the 20 attorney general's office has taken any action 21 on this matter and the response has been no.</p> <p>22 BY MR. GREIM:</p> <p>23 Q. Okay. And when did you last ask Ms. Pino that 24 question?</p> <p>25 A. It's been several months.</p>
<p style="text-align: right;">Page 63</p> <p>1 A. At this point in time, the office is not aware 2 of any action taken by the AG's office on this 3 matter and no status updates received on this 4 criminal matter at this time.</p> <p>5 BY MR. GREIM:</p> <p>6 Q. Okay. I'm not going to ask you any more about 7 it at this time. My question is now, at any 8 time, this referral was made in December of 9 2021, right, so about 14 months ago.</p> <p>10 A. Okay.</p> <p>11 Q. So your testimony is that the attorney general 12 never orally or in writing ever communicated 13 again with the secretary of state about this 14 referral?</p> <p>15 A. No.</p> <p>16 Q. And did you -- did you do any investigation to 17 see whether that was true before today?</p> <p>18 A. Whether what was true?</p> <p>19 Q. Whether it's true that the attorney general has 20 never mentioned this investigation again to the 21 secretary of state's office after this 22 December 20th referral?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. What I can speak to is that there has been no 25 status updates provided to the secretary of</p>	<p style="text-align: right;">Page 65</p> <p>1 Q. When did you last ask Mr. Lange that question?</p> <p>2 MS. LECOCQ: Objection. Actually don't 3 answer that.</p> <p>4 MR. GREIM: Well, it's not a request for 5 legal advice. It's just a request about 6 whether there has been communication or not.</p> <p>7 MS. LECOCQ: Okay.</p> <p>8 A. Yes. More recently, I would say probably 9 within the last month.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. But since the new year?</p> <p>12 A. Yes.</p> <p>13 Q. And I don't want you to give me any legal 14 advice that Mr. Lange told you, but I need to 15 know, did Mr. Lange tell you whether he had 16 heard anything from the attorney general about 17 the investigation?</p> <p>18 MS. LECOCQ: Go ahead.</p> <p>19 A. Mr. Lange has -- to my knowledge, has not heard 20 anything from the attorney general's office 21 about this investigation.</p> <p>22 BY MR. GREIM:</p> <p>23 Q. Okay. Does the secretary of state's office 24 know if the investigation is continuing?</p> <p>25 A. Our understanding is that it's still pending.</p>

<p style="text-align: right;">Page 70</p> <p>1 BY MR. GREIM:</p> <p>2 Q. But you didn't ask him whether he was providing 3 any other information to the AG's office?</p> <p>4 A. I didn't.</p> <p>5 Q. Before we move along, you said in the past 6 month. Maybe we can drill down a little bit 7 more. Was it in the month of February?</p> <p>8 A. Do you have a calendar? I think it was 9 certainly in the month of January or February.</p> <p>10 Q. Was it in the last two weeks?</p> <p>11 A. No.</p> <p>12 Q. It could have been in early February, but it 13 also may have been in January?</p> <p>14 A. I'm just trying to remember an exact date. I 15 feel confident in saying that it was the past 16 three weeks.</p> <p>17 Q. Okay. So let me ask you this: What 18 information has the secretary of state 19 gathered -- and I guess we can't know whether 20 it's been passed on to the attorney general or 21 not. That would be information Mr. Lange has. 22 So I understand that. But what information has 23 the office gathered it has at least considered 24 passing on to the attorney general's office?</p> <p>25 A. Our office has not gathered anything specific</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. And so I guess my question is: Was there any 2 information that you -- that the office has 3 given to Mr. Lange so that he can make the 4 decision about whether to pass it on or not?</p> <p>5 A. The only thing that I am responding to is the 6 fact that our concern was about the data being 7 posted or taken down from the Internet. And so 8 that would be the only update that would have 9 been provided to our attorneys in this case.</p> <p>10 Q. Okay.</p> <p>11 A. And if Dylan so chose, that he felt like that 12 was relevant to the criminal referral, he may 13 have provided an update. There is no 14 additional investigation that our office is 15 undergoing; that is for the attorney general's 16 office.</p> <p>17 Q. Okay, very good. Now, there has been a 18 reference to contact with voters -- or not with 19 voters, with members of the general public who 20 have contacted the secretary of state's office 21 about their concerns with VRF. You mentioned 22 that already. And I just want to be clear. I 23 mean, can we be certain that everything has 24 been turned over in discovery at this point, 25 everything that the office has received?</p>
<p style="text-align: right;">Page 71</p> <p>1 to a criminal investigation. Anything that we 2 have -- you know, our concern was data posted 3 on the website, that was the focus. And so 4 there would only be updates provided to our 5 attorneys on this case related to the status of 6 that data.</p> <p>7 Q. Okay. Whether it was up or down?</p> <p>8 A. Correct.</p> <p>9 Q. And separately, I'm going to draw the line so 10 that we don't invade privilege here, at least 11 until I think about this some more, it sounds 12 like there was some other information of some 13 type given to Mr. Lange for him to decide 14 whether he wanted to give it out to the AG's 15 office?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. No, I never said that.</p> <p>18 BY MR. GREIM:</p> <p>19 Q. No? Okay. Then I misunderstood. I understood 20 that Mr. Lange would have been the person to 21 give it on if there were something to give on?</p> <p>22 A. Sure.</p> <p>23 Q. Right? We don't know whether he has done so or 24 not, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 73</p> <p>1 A. Yes.</p> <p>2 Q. Okay. That saves us a bunch of time. 3 I now want to talk a little bit more 4 about the secretary of state's position here. 5 THE COURT REPORTER: I'm sorry, say that 6 again. I didn't hear your full question. 7 BY MR. GREIM:</p> <p>8 Q. Sure. I now want to talk more now about the 9 secretary of state's position. 10 THE COURT REPORTER: Oh, thank you. 11 MR. GREIM: Sorry. I know I'm 12 shuffling -- there are some papers really close 13 to the microphone. I'm going to try to do 14 better. 15 THE COURT REPORTER: That's okay.</p> <p>16 A. Mr. Greim, just on your last question you asked 17 me in particular about the list or the 18 information from voters, and you asked if we 19 had turned that all over, correct, that was the 20 question?</p> <p>21 BY MR. GREIM:</p> <p>22 Q. Well, my question is: Is there any other 23 information that you've received about 24 complaints? And we've received the list. I 25 just want to know if there's a list update that</p>

<p style="text-align: right;">Page 74</p> <p>1 we haven't gotten yet.</p> <p>2 A. Okay, that's correct. We haven't -- you've</p> <p>3 received any -- the information you've received</p> <p>4 is current.</p> <p>5 Q. Okay. Let me ask you -- let's go to</p> <p>6 Interrogatory Number 13. And we're on back to</p> <p>7 Exhibit 2, it's on page 7.</p> <p>8 A. Okay.</p> <p>9 Q. And the question is, "State whether you contend</p> <p>10 that VRF's use of New Mexico data failed to</p> <p>11 qualify as either a governmental or</p> <p>12 election-related or campaign use under New</p> <p>13 Mexico law, and if so, explain how and why</p> <p>14 VRF's use did not qualify for each applicable</p> <p>15 category."</p> <p>16 Do you see that?</p> <p>17 A. Uh-huh.</p> <p>18 Q. And there's an objection. And then there's</p> <p>19 response subject to the objection. And I'm</p> <p>20 going to start reading from that line, it says,</p> <p>21 "The secretary does contend that VRF's public</p> <p>22 posting of New Mexico data on the Internet</p> <p>23 failed to qualify as a permissible use under</p> <p>24 New Mexico law because it was not for a</p> <p>25 governmental, election, or campaign purpose</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I think because it's not a government entity</p> <p>2 utilizing the data. They're not using it for a</p> <p>3 governmental purpose.</p> <p>4 Q. Okay. So the secretary's position is that</p> <p>5 because VRF is not a governmental entity, its</p> <p>6 use is not a governmental use?</p> <p>7 A. I don't think that's the only thing I said. I</p> <p>8 said they're also not using it for a</p> <p>9 governmental purpose.</p> <p>10 Q. Okay. And so let's talk about for a second</p> <p>11 what they're using it for so that we're on the</p> <p>12 same page. You understand that -- and we went</p> <p>13 through this before so we're going to have to</p> <p>14 kind of warm up and refresh our memory. Do you</p> <p>15 recall VRF saying it was going to analyze the</p> <p>16 data and determine if there were discrepancies</p> <p>17 between basically the credits that show on</p> <p>18 the -- on the snapshot of the list that it got</p> <p>19 and then compare that against the ballots cast</p> <p>20 in the 2020 election and then try to explain</p> <p>21 why there was a difference between those two?</p> <p>22 Do you remember VRF's assertion and testimony</p> <p>23 about that basic idea?</p> <p>24 A. I recall that basic idea that there was an</p> <p>25 intention to utilize voter data received from</p>
<p style="text-align: right;">Page 75</p> <p>1 within the plain meaning of applicable laws."</p> <p>2 Did I read that correctly?</p> <p>3 A. You did.</p> <p>4 Q. Okay. And is that a correct statement?</p> <p>5 A. Yes. The office believes that VRF's public</p> <p>6 posting of the data is not a permissible use.</p> <p>7 Q. Now, you might recall we went -- we explored</p> <p>8 this topic in some detail at the preliminary</p> <p>9 injunction hearing. So I want to understand a</p> <p>10 little bit more about why the public posting is</p> <p>11 not a permissible use. Okay, so let me start</p> <p>12 with governmental. That's one of three uses,</p> <p>13 right?</p> <p>14 A. Right.</p> <p>15 Q. So why is the public -- why is VRF's public</p> <p>16 posting of New Mexico data not a permissible</p> <p>17 governmental use?</p> <p>18 A. Again, I feel like this is something that would</p> <p>19 have been analyzed and discussed with our</p> <p>20 attorneys in particular on how to apply the law</p> <p>21 appropriately.</p> <p>22 Q. I'm not asking for communications with counsel.</p> <p>23 I'd like to know the secretary of state's</p> <p>24 position. Why did it fail to qualify as a</p> <p>25 governmental use?</p>	<p style="text-align: right;">Page 77</p> <p>1 our office at a point in time.</p> <p>2 Q. Uh-huh.</p> <p>3 A. And also analyze that based on information on</p> <p>4 ballots cast, correct.</p> <p>5 Q. And let's just stick with that for a second. I</p> <p>6 will tell you -- well, let me just -- I'll just</p> <p>7 ask the question. Is it the secretary's</p> <p>8 position that that's not a governmental use,</p> <p>9 analyzing the data for that purpose?</p> <p>10 A. I think that would certainly be something that</p> <p>11 would be reviewed by our attorney.</p> <p>12 Q. Maybe. But my question is the secretary's</p> <p>13 position.</p> <p>14 A. I think that the public posting of the data on</p> <p>15 the website is what I can speak to as not being</p> <p>16 something that was prepared under state law.</p> <p>17 Q. Okay. So in other words, the secretary is not</p> <p>18 taking a position that this first project I</p> <p>19 just talked about is not a governmental use.</p> <p>20 When you say it's not a governmental use,</p> <p>21 you're really talking about the public posting</p> <p>22 of the data, correct?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. I think that your specific question is not</p> <p>25 something that we specifically analyzed at this</p>

<p style="text-align: right;">Page 78</p> <p>1 point in time. So I think the public posting 2 is the piece that I can speak to related to 3 that question.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Okay. Well, let's just -- let's keep it to 6 that. Let's just keep it to that. So is it 7 the secretary's position that publicly posting 8 the data and asking voters to review it and 9 report any inconsistencies or perceived errors 10 to the secretary of state is not a governmental 11 use?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. Again, it's the public posting piece that has 14 been analyzed, not some of these other 15 hypotheticals scenarios that you're describing. 16 That is different.</p> <p>17 BY MR. GREIM:</p> <p>18 Q. Okay.</p> <p>19 A. And it would need some review.</p> <p>20 Q. Well, let's -- let's maybe make it as simple as 21 we can. It sounds to me like the secretary's 22 position -- and just tell me if I -- if you 23 disagree. It sounds to me like the secretary's 24 position is that as soon as you have publicly 25 posted the data on the Internet, that cannot be</p>	<p style="text-align: right;">Page 80</p> <p>1 permissible use. I do not have a recollection 2 of a specific analysis related to each item.</p> <p>3 Q. Okay.</p> <p>4 A. It was determined that holistically it was not 5 permissible under state law.</p> <p>6 Q. Okay. But let's just -- let's talk about -- 7 the permissible uses are defined under state 8 law, right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. And what are they?</p> <p>11 A. I have them here, and I don't have the statute 12 in front of me, but this came from our 13 attorneys, so I'm going to trust that it -- 14 governmental election or campaign purpose.</p> <p>15 Q. Right. I don't want to -- I'm not going to 16 make this an exhibit, but I just don't want to 17 have any lack of clarity here. I thought I had 18 it. Here we go. I'm just going to give you a 19 copy -- I'm going to give you the copy of the 20 statute here. We're not going to mark it, but 21 I'm giving you 1-4-5.5. Here we go. The list 22 of uses is under C, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And so 1-4-5.5 C lists the permissible 25 uses under the statute, right?</p>
<p style="text-align: right;">Page 79</p> <p>1 a governmental use regardless of what you tell 2 the public about why you're doing it.</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Is that true?</p> <p>6 A. I disagree. So I think what I can speak to are 7 the facts of what Voter Reference Foundation 8 did in this circumstance, that's what's been 9 evaluated and reviewed, and that's the public 10 posting that I can speak about.</p> <p>11 Q. Okay. So, you know what, that is the easiest 12 way to do it. So before the criminal referral 13 was made, I take it the secretary of state's 14 office got on and looked at the VRF website, 15 right?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And based on what it found on the VRF 18 website, it decided this is not a governmental 19 use, correct?</p> <p>20 A. It's not a permissible use.</p> <p>21 Q. Okay. And we're on governmental right now. So 22 they decided -- we'll get to the other ones. 23 They decided this is not a governmental use, 24 correct?</p> <p>25 A. The analysis was really just based on a</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And then those are further defined down 3 in subsection E?</p> <p>4 A. Correct.</p> <p>5 Q. And maybe we can't go much further than this, 6 but I do want to tie this together. I mean, 7 the secretary of state's position is that VRF's 8 posting on its website, the actual posting it 9 did, after it reviewed the website, was not a 10 governmental use, correct?</p> <p>11 A. Again, the secretary of state's office, in 12 reviewing the statute, not only this section, 13 made a decision that the public posting of the 14 voter data was not a permissible use of that 15 data.</p> <p>16 Q. Okay. And when you say "not a permissible 17 use," you mean not a governmental use or 18 election use or election campaign purposes use, 19 correct?</p> <p>20 A. In part. And it also ties back to the fact 21 that it was not appropriately received from our 22 office and it was being publicly distributed, 23 and we feel like that was a violation.</p> <p>24 Q. And I'm not asking about all the different -- 25 I'm just trying to focus, okay, I'm trying to</p>

<p style="text-align: right;">Page 82</p> <p>1 focus on the lack of permissible use. We just 2 found where the permissible uses are. And, I 3 mean, I just hope we're clear. I -- that the 4 secretary's position is that VRF's use by 5 posting on the Internet is not any of those 6 uses, correct?</p> <p>7 A. You asked me about our decision. You asked me 8 about, you know, what -- why did the secretary 9 of state make this decision and what is our 10 position. And that's what I'm responding to.</p> <p>11 So it is our position that the public posting 12 of the data is not permissible under state law.</p> <p>13 Q. Well, but hold on now, okay? We saw the actual 14 statement. The actual statement says it's not 15 a permissible use, okay? And so we know that 16 there are either two or three permissible uses, 17 depending on how you read that section, right? 18 Governmental is one of them, right?</p> <p>19 A. Uh-huh.</p> <p>20 Q. And if it's not governmental, what's the other 21 use have to be?</p> <p>22 A. Election campaign purpose.</p> <p>23 Q. Okay. And so if it's a permissible use, it's 24 got to be one or the other, right?</p> <p>25 A. And I think there's also parameters around how</p>	<p style="text-align: right;">Page 84</p> <p>1 governmental or election campaign focuses? 2 MS. LECOCQ: Objection.</p> <p>3 A. What I can answer is that that -- number one, 4 that's not what occurred.</p> <p>5 BY MR. GREIM:</p> <p>6 Q. I understand. I'm trying to understand the 7 conduct that you contend is sufficient to 8 violate this statute.</p> <p>9 A. The requester that follows the appropriate 10 process, the lawful process, that would 11 publicly post that data on the Internet, that 12 would be a violation under state law.</p> <p>13 Q. We'll just leave it. That's fine. By the way, 14 before -- I don't want to move too far. 15 Interrogatory Number 13, let's come back to it. 16 The top of the page, this is actually page 8, 17 the paragraph that continues and ends on the 18 very top of the page. The very last sentence 19 there says "Investigation by the attorney 20 general is ongoing and has not yet resulted in 21 any criminal action against VRF." 22 Did I read that correctly?</p> <p>23 A. You did.</p> <p>24 Q. Is that true?</p> <p>25 A. Yes. I don't feel like that's any different</p>
<p style="text-align: right;">Page 83</p> <p>1 that can be utilized. And public posting 2 online is not one of them.</p> <p>3 Q. Okay. But let's just -- let's just stick with 4 the analysis. If it's a permissible use, it's 5 got to be one or the other, governmental or 6 election campaign purposes, right?</p> <p>7 A. Correct.</p> <p>8 Q. And VRF's posting on the Internet that you 9 observed, your -- the secretary's opinion is 10 it's not governmental and it's not election 11 campaign purposes, correct?</p> <p>12 A. I feel like it was a broader analysis based on 13 the public posting and that it was not obtained 14 appropriately and that it was being publicly 15 distributed. So, you know, you continue to ask 16 that question. I understand. And my answer is 17 what I've shared, that our analysis was broader 18 than those two elements.</p> <p>19 Q. Well, I'm going to ask -- and this is getting 20 interesting. Okay. I'm going to have to probe 21 a little further now. 22 So is the secretary's position that if it 23 were -- if it -- VRF had obtained them directly 24 from the secretary of state's office, that 25 their posting on the Internet would be for</p>	<p style="text-align: right;">Page 85</p> <p>1 than what I shared before and that we have no 2 knowledge that the case has been closed. We 3 also don't have any knowledge that there's been 4 any action, again, by the attorney general 5 office on that investigation.</p> <p>6 Q. You're not backing away from the statement we 7 just read, are you?</p> <p>8 A. I'm not.</p> <p>9 Q. Okay.</p> <p>10 A. I'm simply saying it's aligned with what I said 11 before.</p> <p>12 Q. Let me ask you a little bit more about the 13 posting issue on the Internet. Okay, we're not 14 going to focus so much now on governmental 15 election or election campaign. 16 I want to show you a response that we 17 received from your attorneys clarifying some of 18 your prior interrogatory responses. I think 19 this is Exhibit --</p> <p>20 A. 5.</p> <p>21 Q. -- 5. 22 (WHEREUPON, Deposition Exhibit 5 was 23 marked for identification.)</p> <p>24 BY MR. GREIM:</p> <p>25 Q. I'm going to show you an e-mail dated just last</p>

<p style="text-align: right;">Page 86</p> <p>1 Tuesday, February 21, from Erin Lacocq to me 2 copying some other attorneys. And there are 3 some questions that I've posed about some of 4 the other answers. And let me -- let me go to 5 the very bottom of the page. Let's see here. 6 Okay. Actually, let's go to the very first -- 7 you see there's some bolding in the very middle 8 of the page? And I'm asking a question of 9 counsel. You'll see there's an answer in bold. 10 It says, "Both the AG and the SOS believe that 11 'sharing data' outside one's organization, or 12 publishing that data to make it available for 13 the general public, constitutes a violation of 14 New Mexico law. This is not just the act of 15 sharing data, but rather disseminating that 16 information to the general public."</p> <p>17 Did I read that correctly?</p> <p>18 A. You read that bold section correctly.</p> <p>19 Q. Okay. And so I guess my simple question is: 20 Is this the position of the secretary of 21 state's office?</p> <p>22 A. Can I have a moment just to --</p> <p>23 Q. You can. I will tell you, we've printed off 24 the entire e-mail chain. It also has lots of 25 discussion about other things, unfortunately.</p>	<p style="text-align: right;">Page 88</p> <p>1 Internet to the general public that makes the 2 conduct unlawful in the view of the secretary 3 of state?</p> <p>4 MS. LECOCQ: I'm going to go ahead and 5 just do a standing objection for legal 6 contentions.</p> <p>7 MR. GREIM: Noted.</p> <p>8 A. I remember our past conversation as well, and 9 I, again, today would share that the position 10 of the office is that sharing within an 11 organization is different than sharing outside 12 of that organization, and so that applies to 13 the Internet. You are obviously sharing 14 outside of the organization if it's publicly 15 posted online.</p> <p>16 BY MR. GREIM:</p> <p>17 Q. Okay. And I want to understand -- well, let me 18 ask you this: What if an entity contracts with 19 individuals to review voter data it has 20 requested, in the secretary of state's view, is 21 that sharing the data outside of your 22 organization?</p> <p>23 A. I'm just going to make sure I understand your 24 question.</p> <p>25 Q. Sure.</p>
<p style="text-align: right;">Page 87</p> <p>1 So the only -- the e-mail that we actually care 2 about is just on pages 1 and 2. And it's got 3 other questions that don't really relate to 4 what we're doing here today.</p> <p>5 MS. LECOCQ: I object to the extent that 6 we're getting into legal contentions rather 7 than the position of the office. But other 8 than that, go ahead.</p> <p>9 A. (Witness reviewing document.) Okay.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. My very first question is: Is what's in bold, 12 the very first bolded answer on this page, the 13 position of the secretary of state's office?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And I now -- I want to explore the idea 16 of sharing the data with the general public 17 online. I mean, we talked -- I asked you 18 questions before in another proceeding where I 19 asked about sharing data outside of an 20 organization. Do you remember that?</p> <p>21 A. Yes.</p> <p>22 Q. We talked at some length. I'm going to put 23 that aside. We're going to focus on the 24 Internet, okay? And so my question is: What 25 is it about having data available on the</p>	<p style="text-align: right;">Page 89</p> <p>1 A. So you're describing a scenario in which there 2 is an entity that has lawfully obtained the 3 voter data.</p> <p>4 Q. Correct.</p> <p>5 A. And they have agents within their organization 6 that they are sharing the data with, that -- 7 that are contained in that organization."</p> <p>8 Q. No. They've lawfully obtained the data, then 9 they go and they hire very smart data analysts 10 and they execute contracts with these data 11 analysts, independent contractor agreements, 12 and they say, "Here's the data. I want you to 13 see if there are flaws here. And we'll pay you 14 \$100 an hour for your work."</p> <p>15 In the view of the secretary of state, is 16 that sharing the data outside of the 17 organization?</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 A. Yeah, that -- that is certainly a set of facts 20 that have not been explored currently by our 21 office in particular. What I can speak to, 22 again, is if it's considered a part of the 23 organization within that same entity, you know, 24 that's unlawful sharing of the data.</p> <p>25 BY MR. GREIM:</p>

<p style="text-align: center;">Page 90</p> <p>1 Q. Okay.</p> <p>2 A. And I can't speak to all the contractual --</p> <p>3 Q. Okay.</p> <p>4 A. -- scenarios that you've provided.</p> <p>5 Q. So the secretary, as we sit here today, does</p> <p>6 not have a position on whether sharing the data</p> <p>7 with contractors would violate the statute?</p> <p>8 MS. LECOCQ: Objection.</p> <p>9 A. I think that we have a position that if it's</p> <p>10 within the same organization, it can be shared.</p> <p>11 BY MR. GREIM:</p> <p>12 Q. I understand.</p> <p>13 A. Outside of the organization, it should not be</p> <p>14 shared without lawfully obtaining the data.</p> <p>15 Q. Okay. And what we're exploring is sharing</p> <p>16 outside of the organization. I'm trying to</p> <p>17 understand when we cross that line, you know,</p> <p>18 where is the line? That's what all these</p> <p>19 questions are going to try to do. You know</p> <p>20 that's what I'm doing. I'm going to do my</p> <p>21 best. And your answer may well be: We do not</p> <p>22 have a position on where that line exists. We</p> <p>23 have not explored that question. We do not</p> <p>24 know the answer to it. That's okay. I just --</p> <p>25 I want to learn what I can.</p>	<p style="text-align: center;">Page 92</p> <p>1 Q. Okay. I understand they haven't. I understand</p> <p>2 that you would eventually come to some</p> <p>3 decision, you know, but -- and so what I'm</p> <p>4 trying to understand is right now does the</p> <p>5 secretary of state's office have a position</p> <p>6 about contractors? That's my question. And</p> <p>7 either you do or you do not.</p> <p>8 A. I think that that is dependent on what the</p> <p>9 relationship is to the organization that has</p> <p>10 received the data, and that's what I cannot</p> <p>11 speak to.</p> <p>12 Q. So if the relationship is just contractual, you</p> <p>13 cannot tell us whether that counts as inside</p> <p>14 the organization or outside the organization?</p> <p>15 A. I am not prepared to answer what constitutes,</p> <p>16 you know, a contractual agreement, what means</p> <p>17 you're a part of the organization or not. I</p> <p>18 think that's very dependent on the facts of the</p> <p>19 specific scenario.</p> <p>20 Q. Why is it important that the person who</p> <p>21 receives the data from the lawful requester is</p> <p>22 a part of the organization?</p> <p>23 A. Because I think that is a clear distinction</p> <p>24 that we're able to make based on our analysis</p> <p>25 of the statute.</p>
<p style="text-align: center;">Page 91</p> <p>1 And so I understand your answer is when</p> <p>2 you share it outside of the organization,</p> <p>3 that's where the line is crossed. But we're</p> <p>4 all lawyers here, okay? And there's lots of</p> <p>5 people who want to use the data. And so I'm</p> <p>6 trying to understand what the principle is</p> <p>7 behind that. I'm asking you specific questions</p> <p>8 to try to understand that principle, if we can.</p> <p>9 I'm not going to spend too much longer given</p> <p>10 the time we have.</p> <p>11 So the question I just asked was about</p> <p>12 people who don't become employees of the</p> <p>13 organization, they just get hired under a</p> <p>14 contract to do a job with the data. And I</p> <p>15 think the answer that I have back is the</p> <p>16 secretary of state doesn't have a response to</p> <p>17 that question, doesn't have a position on that?</p> <p>18 A. I don't think that's what I said. So number</p> <p>19 one, you made a good distinction. You're all</p> <p>20 attorneys, I'm not. So that's why we would</p> <p>21 seek the guidance and advice of an attorney for</p> <p>22 a separate set of facts. I think what you've</p> <p>23 described is very fact based. And those facts</p> <p>24 have not been explored by our office at this</p> <p>25 point in time.</p>	<p style="text-align: center;">Page 93</p> <p>1 Q. Okay. Based -- obviously the statute doesn't</p> <p>2 say part of the organization. That doesn't</p> <p>3 exist in the statute. You agree with me on</p> <p>4 that?</p> <p>5 A. I agree that we've reviewed and provided some</p> <p>6 legal review and analysis on the facts that we</p> <p>7 feel like our position -- we maintain the</p> <p>8 position that if you're within the</p> <p>9 organization, that is permissible sharing. And</p> <p>10 if you're outside of the organization, that's</p> <p>11 not permissible under state law.</p> <p>12 Q. And what is it about being part of the</p> <p>13 organization or within the organization --</p> <p>14 those are the words you just used -- that make</p> <p>15 it permissible to share the data with those</p> <p>16 individuals?</p> <p>17 A. We feel like based on analysis -- you know,</p> <p>18 again, we would probably have to go back to an</p> <p>19 attorney to understand some of those</p> <p>20 intricacies. But that is a fact that has been</p> <p>21 presented to our office and we've reviewed it</p> <p>22 and made a determination that based on state</p> <p>23 law we would not feel like it was a violation</p> <p>24 if folks were sharing the data within that</p> <p>25 organization because they have appropriately</p>

<p style="text-align: right;">Page 94</p> <p>1 obtained that data.</p> <p>2 Q. Okay. So implicit within your referral, I 3 think, is the secretary of state -- well, let 4 me back up.</p> <p>5 The secretary of state understands 6 that -- because they -- you've visited VRF's 7 website, correct?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And on the website for New Mexico before the 10 data was pulled down, you must click that you 11 will only use the data for specific purposes, 12 correct? Do you recall that?</p> <p>13 A. I recall that being something that was 14 testified to. I didn't -- yeah, I recall 15 that -- somebody sharing that.</p> <p>16 Q. And so VRF is taking the position here that 17 someone who agrees to use the data for 18 permissible purposes, for the purposes that VRF 19 wants to use the data for, is part of VRF. It 20 forms an association with us to use this data 21 for a certain purpose. Does the secretary of 22 state agree with that position?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Again, I think you're going back to kind of 25 something that would require some additional</p>	<p style="text-align: right;">Page 96</p> <p>1 to our office, pay for data, and then receive 2 the data.</p> <p>3 Q. And so my question is simply this: If Voter 4 Reference Foundation makes a request with the 5 affidavit, pays for the data and receives it, 6 and then posts the data online for anyone who 7 agrees to use it for lawful purposes, okay, 8 which we know is true, we know the second thing 9 is true, why does the secretary of state's 10 office not recognize the viewers of VRF's data 11 as being within the organization of VRF?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. And, again, I think that's different than what 14 I responded to. So, one, I was clear that I am 15 not an attorney. I can't speak to what that, 16 you know, relationship is from a legal 17 perspective. I would need to take those facts 18 in particular and address it with our general 19 counsel or our attorney to get clarity on how 20 to apply the law in that specific scenario.</p> <p>21 What I can state, however, is that there 22 is a specific process to lawfully obtain, and 23 that requires the affidavit.</p> <p>24 BY MR. GREIM:</p> <p>25 Q. Okay. I'm not asking you anymore about</p>
<p style="text-align: right;">Page 95</p> <p>1 legal analysis, right, what is the relationship 2 between that individual and Voter Reference 3 Foundation.</p> <p>4 What I will say is that, again, we feel 5 like the statute is very clear in that a 6 requester needs to complete an affidavit with 7 our office to be able to utilize, to receive 8 that data, and to use it for a permissible 9 purpose.</p> <p>10 And so in that case, Voter Reference 11 Foundation, from our perspective, does not have 12 the authority to prescribe that affidavit.</p> <p>13 BY MR. GREIM:</p> <p>14 Q. Voter Reference Foundation doesn't have the 15 authority to prescribe the affidavit?</p> <p>16 A. Yes.</p> <p>17 Q. What do you mean by that?</p> <p>18 A. The statute, our state statute requires that a 19 requester complete an affidavit. I know we 20 spoke about that pretty in depth. So there is 21 an appropriate lawful process to receive voter 22 data.</p> <p>23 Q. Right.</p> <p>24 A. And one piece of that process is for a 25 requester to complete an affidavit, submit it</p>	<p style="text-align: right;">Page 97</p> <p>1 lawfully obtaining it, okay? We'll come back 2 to that question.</p> <p>3 I'm asking you now about an organization 4 that lawfully has the data. They want to share 5 that data with other people and they know the 6 issue is going to be: Is the secretary of 7 state going to think these people are within 8 the organization or are they not within the 9 organization, okay?</p> <p>10 So my question to you is: Why does the 11 secretary of state contend that people who 12 agree, before they're given access to the data 13 that they will only use it for lawful purposes, 14 are not within the organization of VRF?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. I don't understand your last statement. Are 17 you asking me a question?</p> <p>18 BY MR. GREIM:</p> <p>19 Q. Okay. I was. I was. My question is -- I'm 20 trying to think of a way to break this down. 21 Let's look at it this way: If an entity, 22 with lawfully requested data, it sells that 23 data to its customers, but requires -- and it 24 makes it available to them on the Internet, but 25 it requires them to do that through a secure</p>

<p style="text-align: right;">Page 98</p> <p>1 connection, does the secretary of state say 2 that's okay, those customers are really within 3 the organization? 4 MS. LECOCQ: Objection. 5 A. Again, you know, what I can speak to is either 6 in the organization or out of the organization. 7 That is the determination. That is the 8 position of the office. Your specific 9 hypothetical scenarios would require a specific 10 analysis on those facts that I am not able to 11 speak to. 12 BY MR. GREIM: 13 Q. Because the data -- the statute doesn't speak 14 to those situations, does it? 15 A. It speaks to within the organization or out of 16 the organization. That is clear from our 17 analysis based on the requirement that this 18 came to the office and we had to review those 19 specific facts. And so we've taken a position. 20 We are still, you know, of that same position 21 today; if it's in the organization, you can 22 share it. If it's not, no. And that has not 23 changed. But, you know, you're kind of coming 24 off with something that's outside of that 25 analysis --</p>	<p style="text-align: right;">Page 100</p> <p>1 MS. LECOCQ: Objection. 2 A. I don't recall that being a specific item that 3 was discussed. I can speak that I heard 4 testimony that that existed on the website. I 5 don't recall that being part of the analysis. 6 BY MR. GREIM: 7 Q. Okay. Well, does the secretary of state 8 contend that, in fact, users who get on the 9 website to view the data don't have to click 10 first to agree that they'll only use the data 11 for permissible purposes? 12 MS. LECOCQ: Objection. 13 A. I don't know what Voter Ref asks them when you 14 go into their website. 15 BY MR. GREIM: 16 Q. Okay. And did the secretary of state ever 17 investigate that before making a criminal 18 referral? 19 A. I think we certainly viewed the website and we 20 had an understanding that our voter data was 21 being publicly made available and it was being 22 made publicly available by an entity that did 23 not request that data from our office. And 24 that was the basis of the analysis. 25 Q. Okay. So did the secretary of state make any</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Okay. 2 A. -- that would require some review. 3 Q. Well, let's just make it this simple. The 4 secretary of state contends that VRF's sharing 5 with people who click on the link before 6 getting the data is not sharing within the 7 organization, correct? 8 MS. LECOCQ: Objection. 9 A. I don't -- I don't have an awareness of us 10 taking that specific position that clicking on 11 a link is what determines if you're in or 12 outside of the organization. 13 BY MR. GREIM: 14 Q. Well, I'd like to know what it is about VRF's 15 conduct that caused the referral, okay? And 16 certainly the secretary of state's office 17 visited the website. We know that, okay? And 18 the secretary of state's office encountered the 19 initial requirement that a user click that they 20 will agree to the terms of the use, including 21 that it be used for a lawful purpose. 22 The secretary of state -- well, let me 23 ask you this: Can the secretary of state tell 24 us that they encountered that when they came on 25 to the website?</p>	<p style="text-align: right;">Page 101</p> <p>1 effort to determine what users had to do before 2 they could view the data on VRF's website? 3 MS. LECOCQ: Objection. 4 A. Again, I don't recall that being part of the 5 analysis. 6 BY MR. GREIM: 7 Q. Who knows the answer to that question? 8 A. I'm sure our attorney. But I just don't think 9 that was a key point. It was a fact that the 10 data was publicly available; it was a fact that 11 Voter Reference Foundation has not submitted 12 the appropriate affidavit to receive that data; 13 and it is a fact that our analysis about how 14 you may distribute that is leading to the 15 containment in the organization. So the World 16 Wide Web is not an organization. 17 Q. So the secretary -- it didn't matter to the 18 secretary of state what someone had to agree to 19 before viewing the data on the website? 20 MS. LECOCQ: Objection. 21 A. I wouldn't say it didn't matter. But I've 22 shared what our analysis was based on. You 23 know, again, going back to your original 24 question, if I click a box, does that 25 constitute being a part of Voter Reference</p>

<p style="text-align: right;">Page 102</p> <p>1 Foundation as an organization? That is not 2 something that I am prepared to answer and 3 would require some analysis from an attorney. 4 If you're asserting that it somehow brings them 5 into your organization, I guess that's your 6 argument to make, but...</p> <p>7 BY MR. GREIM:</p> <p>8 Q. The secretary of state didn't -- well, let me 9 ask you this -- you said what your analysis 10 was, okay. I'm trying to understand that a 11 little bit better.</p> <p>12 A. Sure.</p> <p>13 Q. So did the analysis at all depend on the 14 relationship that was formed between VRF and 15 the users of its website?</p> <p>16 A. No.</p> <p>17 Q. It was irrelevant?</p> <p>18 A. It was not considered as part of the analysis.</p> <p>19 Q. And it's possible -- because we can't ask you 20 again because this is our last day, I think we 21 have to leave it at this -- it's possible that 22 the secretary of state did not determine before 23 making the referral whether users, in fact, had 24 to click through and promise that they would 25 only use the data for permissible purposes?</p>	<p style="text-align: right;">Page 104</p> <p>1 of the public had to do before accessing the 2 data. That's what these questions are about. 3 I'm going to ask it very -- just listen 4 very carefully. I'm going to speak slowly. I 5 know we're covering a lot of ground. Let's 6 just try to nail this down.</p> <p>7 My question is: Did the secretary of 8 state's office determine, before making the 9 referral, what members of the public had to do 10 in order to get access to the data on VRF's 11 website?</p> <p>12 A. And, again -- I will also speak slowly -- that, 13 in fact, our office did not utilize the fact 14 that there was a check box as a part of a 15 discussion for making a determination if it was 16 lawful or unlawful. And so, therefore, I 17 cannot speak if our attorney clicked the box. 18 What I know is that the office made a 19 determination based on the fact that voter data 20 was being publicly made available on the 21 Internet.</p> <p>22 Q. My question is not what your determination was. 23 My question is: What did the secretary of 24 state's office know about how the website 25 worked? I'm not asking whether it mattered to</p>
<p style="text-align: right;">Page 103</p> <p>1 MS. LECOCQ: Objection.</p> <p>2 A. Again, I think I've been clear on the position 3 of the office that posting voter data online is 4 a public distribution of that data, and that 5 that is the position of the office.</p> <p>6 BY MR. GREIM:</p> <p>7 Q. That wasn't my question. Okay. My question is 8 what the secretary's office did before making 9 the referral. I'm not asking you to repeat 10 your position. We have that down.</p> <p>11 My question is: Is it possible that no 12 one from the secretary of state's office looked 13 to see what members of the public had to do in 14 order to get access to the information on VRF's 15 website?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. And I, again, shared that it was not part of 18 the analysis.</p> <p>19 BY MR. GREIM:</p> <p>20 Q. I know it's not part of the analysis. I'm 21 trying to now probe your knowledge. I'm trying 22 to probe the knowledge of the office when it 23 made the referral; not its analysis, its 24 knowledge. And I'm trying to determine whether 25 the secretary of state determined what members</p>	<p style="text-align: right;">Page 105</p> <p>1 you or not. I'm asking whether you knew. And 2 so whether an attorney wrote it or an 3 investigator in your office, either you knew or 4 you did not know, or you don't know whether he 5 knew. Okay, so I'm going to ask it one last 6 time.</p> <p>7 Did the secretary of state's office know 8 what was required for members of the public to 9 do before they accessed the data on VRF's 10 website?</p> <p>11 A. I don't know.</p> <p>12 Q. Who would know the answer to that question?</p> <p>13 A. I suspect our attorney.</p> <p>14 Q. Do you know who investigated it? Was it an 15 attorney?</p> <p>16 A. I think we talked about who was involved in 17 making a decision about referring it. So that 18 was myself, Deputy Secretary of State Sharon 19 Pino, general counsel Dylan Lange. And based 20 on all of the information we had in hand, we 21 made a decision to refer that.</p> <p>22 Q. Okay. And there was no one else involved in 23 making that decision?</p> <p>24 A. And as I shared, we made a recommendation and 25 the secretary of state did approve that</p>

<p style="text-align: right;">Page 106</p> <p>1 referral.</p> <p>2 MR. GREIM: Let's take another little</p> <p>3 break here.</p> <p>4 (WHEREUPON, at this time a lunch break</p> <p>5 was taken.)</p> <p>6 BY MR. GREIM:</p> <p>7 Q. Back on the record. So I wanted to -- before</p> <p>8 we totally move past what we did at the end</p> <p>9 of -- before our break, I want to ask you about</p> <p>10 some other recipients of the voter data here.</p> <p>11 Now, each political party requests the</p> <p>12 voter data, don't they, on a regular basis?</p> <p>13 A. Yes.</p> <p>14 Q. And do you recall testifying before that, you</p> <p>15 know, political parties sharing the data with</p> <p>16 volunteers would not be deemed sharing outside</p> <p>17 the organization?</p> <p>18 A. Agreed.</p> <p>19 Q. Okay. And the secretary of state does not go</p> <p>20 and ask the political parties to submit a --</p> <p>21 some sort of agreement from each volunteer for</p> <p>22 a party or document that in any way, correct?</p> <p>23 A. No, if it's within that organization.</p> <p>24 Q. And so how -- what is it that makes the</p> <p>25 volunteers part of the organization of a</p>	<p style="text-align: right;">Page 108</p> <p>1 would require counsel. Well, yeah, I'm not</p> <p>2 going to suggest an answer to you. Let's just</p> <p>3 move ahead.</p> <p>4 So let me -- let me ask you, I mean,</p> <p>5 political parties and candidates both use</p> <p>6 volunteers, you know that. And you know that</p> <p>7 candidates in this state and elsewhere hire</p> <p>8 political consultants to help run their</p> <p>9 campaigns, right?</p> <p>10 A. Right.</p> <p>11 Q. And I guess your testimony is that the</p> <p>12 secretary of state does not have a position, as</p> <p>13 we sit here today, as to whether the candidates</p> <p>14 sharing voter data with their paid consultants</p> <p>15 would constitute sharing within the</p> <p>16 organization?</p> <p>17 A. We have not evaluated that particular fact.</p> <p>18 Q. Now, what if I tell you -- I know I'm not from</p> <p>19 New Mexico, but if I tell you right here and</p> <p>20 now that I believe that political parties are</p> <p>21 sharing voter data that they receive -- that</p> <p>22 they lawfully receive with paid political</p> <p>23 consultants who are not part of the political</p> <p>24 party and not part of the candidate campaign,</p> <p>25 and I say I'm making a complaint and I believe</p>
<p style="text-align: right;">Page 107</p> <p>1 political party?</p> <p>2 A. I don't think there's any particular legal</p> <p>3 definition that I can point you to, but they</p> <p>4 are participating as a member of that</p> <p>5 organization. My understanding is they are</p> <p>6 staff of the organization.</p> <p>7 Q. And what about a political party, you know,</p> <p>8 sharing the data with their political</p> <p>9 consultants that they pay for, would that be</p> <p>10 okay with the secretary of state's office?</p> <p>11 That does not count as sharing outside the</p> <p>12 organization?</p> <p>13 A. I think we're back to, you know, in the</p> <p>14 organization, out of the organization, is there</p> <p>15 specific facts that need to be reviewed, then</p> <p>16 that would be something we would have to look</p> <p>17 at on an individual basis. But if it is part</p> <p>18 of their organization, that they can share.</p> <p>19 Q. Well, and as I understand that -- I mean, I</p> <p>20 think -- I'm going to do a few more of these</p> <p>21 questions, and if you do not have an answer</p> <p>22 that require consulting with counsel --</p> <p>23 A. Uh-huh.</p> <p>24 Q. -- then I'd advise you to give me an answer if</p> <p>25 you can, but -- but just tell me that that</p>	<p style="text-align: right;">Page 109</p> <p>1 they're doing it, I mean, what's stopping you</p> <p>2 from investigating?</p> <p>3 A. Getting a complaint about an alleged violation,</p> <p>4 there is nothing that would stop us from</p> <p>5 looking into it.</p> <p>6 Q. Okay. Now, let's talk about other requesters,</p> <p>7 other recipients of data. The group called the</p> <p>8 Public Interest Law Foundation requests data</p> <p>9 from the secretary of state's office, right?</p> <p>10 A. Right.</p> <p>11 Q. And would your position be that they cannot</p> <p>12 share the voter data with their own volunteers,</p> <p>13 or would it be that, just like political</p> <p>14 parties, their volunteers are okay to receive</p> <p>15 the data?</p> <p>16 A. I think that we would handle it in the same</p> <p>17 way. So if they're a part of the organization,</p> <p>18 then they would be allowed to share the data.</p> <p>19 Q. And you would not go to PILF, I'll call it, and</p> <p>20 say we need to see documentation proving that</p> <p>21 these volunteers are part of your organization?</p> <p>22 A. As a practice, no. If we're made aware that</p> <p>23 something is happening outside the bounds of</p> <p>24 the law, then we may ask additional questions.</p> <p>25 But if they are affirming through the affidavit</p>

<p style="text-align: right;">Page 110</p> <p>1 that they are using it lawfully, meaning they 2 are not unlawfully sharing or distributing or 3 selling, that is the document that we utilize 4 to assess that they're going to follow the law. 5 If we're made aware, then we would take a 6 different step forward.</p> <p>7 Q. Can VRF share data that it lawfully receives 8 from the secretary of state's office with its 9 own volunteers without violating the same 10 organization issue?</p> <p>11 A. If they're a part of the organization, anything 12 that is a lawful part of an entity, that 13 determination is not mine to make in this 14 instant. But if it's sharing it within its own 15 organization, that is the parameter. That is 16 the position of our office that that's the 17 parameter that we would ask an entity to 18 follow. And we believe it's outlined in the 19 affidavit.</p> <p>20 Q. And volunteers count, just like they count for 21 parties, correct?</p> <p>22 A. Again, I think – you know, you are I think 23 stretching my answer a little bit there. I 24 think my direct answer to you has been and will 25 continue to be that the position of the office</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Okay. And I just want to be clear because you 2 just used the word "employees." I take it your 3 position is not that being within an 4 organization is limited to employees, correct?</p> <p>5 A. I have not stated that.</p> <p>6 Q. Okay. Because volunteers are not paid, right?</p> <p>7 A. Again, I think that, you know, you're asking me 8 to analyze scenarios that have yet to come to 9 our office. 10 What I can speak to is if you're a part 11 of the organization. And you continue to ask 12 me to, you know, make some legal analysis on 13 hypothetical scenarios that I am not able to do 14 in this moment. So I think it's the same 15 question.</p> <p>16 Q. Okay. But it's fair to say that the secretary 17 of state's office, and you're here as the 18 30(b)(6) witness, they have not actually 19 undertaken a formal analysis on the questions 20 I've asked you so far, you're not aware of any 21 such analysis?</p> <p>22 A. Correct.</p> <p>23 Q. Well, let me ask you -- today VRF has voter 24 data from the secretary of state's office. It 25 has it. Can VRF share that voter data with its</p>
<p style="text-align: right;">Page 111</p> <p>1 is that you have to be within the organization. 2 And I continue to say that each scenario -- 3 facts that need to be evaluated, I think you 4 said it best, would need to go to our counsel 5 for an analysis to determine if it's lawfully a 6 part of organization or not.</p> <p>7 Q. Okay. So for VRF, the request would need to go 8 to counsel, correct?</p> <p>9 A. Under any circumstance, any relationship.</p> <p>10 Q. So does -- the party's use of volunteer, that 11 has gone to counsel?</p> <p>12 A. I think that you asked me if I had testified to 13 that fact, and my understanding is that they 14 are -- what I said was my understanding was 15 that they are employed with that organization.</p> <p>16 Q. Well, obviously, volunteers for political 17 parties are not employees of the parties.</p> <p>18 A. They are staff is my understanding, is what I 19 testified to and what I answered here today.</p> <p>20 Q. Okay. Well, the -- let's just say this: You 21 don't -- you're not backing away from what your 22 testimony was before, correct? We can just go 23 back and look to see what you say. You're not 24 changing anything today?</p> <p>25 A. I'm not changing anything today.</p>	<p style="text-align: right;">Page 113</p> <p>1 volunteers without violating the -- within the 2 organization's restriction?</p> <p>3 A. I don't have a different answer for you, 4 Mr. Greim. If it's within your organization, 5 you may share it.</p> <p>6 Q. Right. My question is: Are volunteers within 7 the organization?</p> <p>8 A. Are they a part of the staff? I guess that 9 goes back to the analysis that you're tying it 10 to. So that is -- that was my testimony and 11 that still is if they're a part of the 12 organization.</p> <p>13 Q. It's okay if they're unpaid?</p> <p>14 A. I think the fact is are they a part of the 15 organization or not. That is really what the 16 requirement is.</p> <p>17 Q. So do they -- do they need to have an agreement 18 with the organization of any kind?</p> <p>19 A. We have not outlined all of those logistical 20 details. Right? Every scenario would require 21 some analysis to determine if it's within the 22 bounds of the statute or not.</p> <p>23 Q. Okay. Well, I'm going to go just a bit further 24 before we move on. So canvassers who walk door 25 to door for candidates and political parties</p>

<p style="text-align: right;">Page 114</p> <p>1 get a list of voter data that comes from the 2 secretary of state. And let's just stipulate 3 those door-to-door walkers are not employees, 4 they're not being paid, they're college 5 students. Is that unlawful activity?</p> <p>6 MS. LECOCQ: Objection.</p> <p>7 A. I think -- I guess the question would remain 8 are they a part of the organization that 9 originally received the data. Again, the same 10 question.</p> <p>11 Q. So the secretary of state can't answer that 12 question?</p> <p>13 A. Not without additional review, agreed.</p> <p>14 Q. Now, remember I asked you about a couple of 15 for-profit groups such as Catalist and 16 Aristotle and i360, I think a couple of times 17 before in your prior testimony, right?</p> <p>18 A. Uh-huh.</p> <p>19 Q. And these are groups the district court made 20 factual findings about. Did you read the 21 district court's decision in this case?</p> <p>22 A. I did not.</p> <p>23 Q. Okay. Well, do you recall that I raised the 24 question of these groups requesting data from 25 the secretary of state and then charging</p>	<p style="text-align: right;">Page 116</p> <p>1 Q. Okay. And I think you said you never had a 2 complaint about those groups, which is why 3 you'd never looked into it before. Do you 4 recall that?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Now, I asked you specifically in your 7 testimony before the Court whether your office 8 would, in fact, go and look into these groups 9 to determine whether they were violating the 10 law. Do you remember that?</p> <p>11 A. If I received a complaint, is that what you 12 stated?</p> <p>13 Q. No, I didn't ask whether you received a 14 complaint. I just said based on the 15 information we had during the proceeding at 16 that time, whether your office would go and 17 look into those entities. Do you recall that?</p> <p>18 A. I recall a different statement.</p> <p>19 Q. Okay. What do you recall?</p> <p>20 A. What I recall was you being -- asking for 21 clarity and if we had an awareness that these 22 groups were violating the law, if we would look 23 into it.</p> <p>24 Q. I see. I see. Okay. Well, let me ask you: 25 Have you done anything since your testimony to</p>
<p style="text-align: right;">Page 115</p> <p>1 clients to make the data available for them for 2 their own purposes? And I asked you whether 3 that counts as sharing outside the organization 4 of these for-profit companies like Catalist or 5 Aristotle. Do you recall that questioning?</p> <p>6 A. I recall similar questioning. I guess just to 7 be clear, who are they sharing with? I 8 didn't --</p> <p>9 Q. Customers.</p> <p>10 A. What does that mean?</p> <p>11 Q. It could be a candidate, it could be a 12 non-profit that wants to engage in advocacy. 13 And rather than requesting the data directly 14 from you, they go and they buy access to 15 databases from groups like Catalist and 16 Aristotle.</p> <p>17 And when I mentioned this to you before, 18 I think you said you'd never heard of these 19 groups before, correct?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Now, you know there is a record the secretary 22 of state has of the groups requesting data. I 23 take it you don't review that list every month 24 or something, right?</p> <p>25 A. I don't.</p>	<p style="text-align: right;">Page 117</p> <p>1 look into whether these groups were violating 2 the law?</p> <p>3 A. No.</p> <p>4 Q. And let me ask you this: If a for-profit group 5 is receiving data from New Mexico and other 6 states and other sources of information and 7 then charging clients a fee for access to that 8 data, would that comply with your 9 within-the-organization requirement? Is that 10 sharing permissible?</p> <p>11 A. They're sharing it outside of the organization?</p> <p>12 Q. Yes, with their clients.</p> <p>13 A. So outside of their organization is a part of 14 this? That is the background?</p> <p>15 Q. Yeah, I'm asking whether that counts as outside 16 of the organization.</p> <p>17 A. Oh, you're asking me to make a determination?</p> <p>18 Q. Yeah.</p> <p>19 A. Again, you know, I'm not clear on who are these 20 entities. I don't know their relationship. If 21 it's within their organization, they're good. 22 If it's not, they can't share it.</p> <p>23 Q. What would it take for you to look deeper into 24 this question to decide whether the law is 25 being violated?</p>

<p style="text-align: right;">Page 118</p> <p>1 A. I think it would take just somebody making our 2 office aware of the practice, the allegation, 3 and the details of any violation, that's how we 4 handle all complaints.</p> <p>5 Q. So if ProPublica contacted you about this, that 6 might be sufficient?</p> <p>7 MS. LECOCQ: Objection.</p> <p>8 A. If we're made aware of a potential violation, 9 our office has the authority to look into it.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. And as of today, there's been no effort 12 whatsoever to look into what Catalyst or 13 Aristotle are doing?</p> <p>14 A. We have not -- again, the fact remains that we 15 have not received any complaints nor allegation 16 that they have violated the law.</p> <p>17 Q. Do you have a written policy that you won't 18 investigate without a complaint?</p> <p>19 A. No.</p> <p>20 Q. Okay. That's just a rule of thumb that the 21 office uses?</p> <p>22 A. I think our office has limited resources, and 23 so we have to develop policies and procedures 24 that provide our office an opportunity to both 25 manage our workload and treat constituents</p>	<p style="text-align: right;">Page 120</p> <p>1 appropriate priorities.</p> <p>2 Q. Okay. I'm just going to read to you from the 3 district court's decision in this case, 4 document 51, pages 158 to 159.</p> <p>5 "The Court found the secretary of state's 6 interpretation of the election code 7 criminalizes requesters, such as Catalyst, 8 i360, Data Targeting, and L2 Inc., who applied 9 for voter data and then sell it to clients 10 outside their own organization." That's at 11 pages 158 and 159. Now, having --</p> <p>12 A. Sorry. What did it say, the Court determined 13 that?</p> <p>14 Q. Yes. Yeah. This is from a court decision in 15 this case. So my question is: Was the 16 secretary of state aware of that statement and 17 the district court's decision?</p> <p>18 A. Two questions ago I responded that I had not 19 read that decision.</p> <p>20 Q. Okay. You haven't. But I take it that the 21 secretary of state -- the secretary of state 22 issued a press release about that decision, 23 right? So is it your testimony that the 24 secretary of state was unaware of that 25 statement and the Court's decision?</p>
<p style="text-align: right;">Page 119</p> <p>1 equally. So we do have a policy and procedure 2 related to voter complaints. We receive 3 several on various matters. And in particular, 4 I think it's important to notice that the 5 distinguishing factor for Voter Reference 6 Foundation was it was online; that was the 7 alarming issue.</p> <p>8 Q. Okay. So -- well, maybe let's ask about this 9 then. Is the office's position that sharing 10 outside the organization is okay so long as 11 it's not online?</p> <p>12 A. No.</p> <p>13 Q. Okay.</p> <p>14 A. But to your point on -- you know, what in this 15 case -- it wasn't a complaint that we received, 16 right? We were made aware. We took an action 17 outside of that complaint process that there 18 was an immediate concern for public safety.</p> <p>19 Q. What if a federal district court made you aware 20 of possible criminal activity, would that be 21 sufficient or would you need to receive it from 22 someone else?</p> <p>23 A. I don't think there's any one single source, 24 right. It's simply a matter of being aware and 25 managing the appropriate resources and the</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Our office is currently aware of that decision.</p> <p>2 Q. Okay. And so was why was that statement not 3 sufficient, a finding from a federal district 4 court, to at least look into whether Catalyst 5 and the other entities were violating the law?</p> <p>6 MS. LECOCQ: Objection.</p> <p>7 MS. SCHREMMER: Objection.</p> <p>8 A. I don't think it's insufficient. I think, you 9 know, our office has limited resources. 10 There's nothing saying we won't look into it. 11 The question I've responded to as of right now, 12 we have not. That doesn't mean we won't.</p> <p>13 BY MR. GREIM:</p> <p>14 Q. Well, what additional information would it take 15 for you to look into these questions?</p> <p>16 A. I don't think there is anything additional in 17 particular.</p> <p>18 Q. So maybe one day somebody will check out one of 19 the websites and understand what they do with 20 their data?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. I have not heard anything that you have 23 presented here today that tells me that they 24 are publishing it online.</p> <p>25 BY MR. GREIM:</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. I see. So is that the threshold for 2 determining -- for starting an investigation? 3 A. It's not, but what I've spoken to is it was a 4 deciding factor in the prioritization out of 5 concern for our voters and voter rights and for 6 their participation in the process. 7 Q. Of course, the secretary of state also didn't 8 make any effort to determine how the general 9 public was actually accessing the data on the 10 website, did it? 11 MS. LECOCQ: Objection. 12 A. I'm sorry? 13 BY MR. GREIM: 14 Q. We'll just strike that and move on. 15 I want to now change gears a little bit. 16 And we'll talk about the -- this allegation of 17 disinformation. 18 Is it the secretary's position that the 19 sharing of out-of-date voter data could 20 constitute disinformation? 21 A. I think there's a potential, yes. 22 Q. Okay. And explain that to us. 23 A. Sure. So the voter registration database, the 24 voter's file, or the roll as we call it, it's a 25 dynamic file. It's ever changing. There are</p>	<p style="text-align: right;">Page 124</p> <p>1 engaging in disinformation when it reposted 2 that data? 3 A. I think it was not the data alone. 4 Q. Okay. What else was it? 5 A. I feel like there is information explaining the 6 data that was not accurate. 7 Q. Okay. So when VRF reposted its data online, it 8 was not just the data but was the accompanying 9 explanation that made it disinformation? 10 A. It was the comparison. As I said, I spoke to 11 you're comparing -- they were comparing 12 outdated data to election results that were -- 13 it wasn't a correct accurate comparison. There 14 wasn't an understanding for the viewer as to 15 the details, very important details, to share 16 facts about the data. 17 Q. Okay. So what you're referring to there is the 18 statement that was made about there being a 19 discrepancy between the voting credits shown in 20 the data file that VRF received and a separate 21 data source which was the number of ballots 22 cast in the election, right? 23 A. Correct. 24 Q. So -- and I think we all know what that 25 statement was. My question for you is a little</p>
<p style="text-align: right;">Page 123</p> <p>1 constant updates being made. And so it's a 2 point in time anytime somebody receives that 3 data. 4 And if we're doing comparisons, I think 5 anytime you're analyzing data, it's important 6 to be comparing the same type of data, right? 7 We can't take something from years ago and look 8 at it for a specific election. 9 So I think the concern is that outdated 10 data does present the potential for 11 misinformation. 12 Q. Okay. Now, in this case, VRF posted data 13 online after winning a preliminary injunction 14 from the district court. Do you recall that? 15 A. Uh-huh. 16 Q. And the data that it posted at that time was 17 the only data that it was able to receive 18 through your office, right? 19 A. Right. 20 Q. Now, by that time, that was not the most recent 21 information that it had -- that was -- I'm 22 sorry. That was not the most recent version of 23 the voter file, was it? 24 A. No. 25 Q. Does the secretary contend that VRF was</p>	<p style="text-align: right;">Page 125</p> <p>1 bit different though, okay? And it may be 2 that -- it may be that you'll have a different 3 answer. 4 I'm asking about whether posting the data 5 online itself, with no other statement about a 6 discrepancy itself, is misinformation? 7 A. I think it's important to note that's not what 8 happened. So our position on the 9 misinformation was tied to the data being 10 posted publicly, outdated data, with an 11 analysis about a discrepancy that was 12 inaccurate. So that was the misinformation 13 issue. 14 (WHEREUPON, Deposition Exhibit 6 was 15 marked for identification.) 16 BY MR. GREIM: 17 Q. Okay. I don't want to -- I'm just going to 18 show you your own interrogatory response. This 19 is an earlier set of interrogatories. We're 20 going to mark this as Exhibit 6. And if you go 21 to page 6 -- by the way, I'll tell you -- I'll 22 represent to you that attached here that we do 23 have your verified statement for this set of 24 interrogatories. 25 So on page 6 you'll see there's something</p>

<p style="text-align: right;">Page 126</p> <p>1 called Interrogatory Number 7, and it asks the 2 secretary of state to "Identify any and all 3 misinformation, including regarding the 2020 4 general election, you believe VRF has or 5 intends to spread on its website VoteRef.com."</p> <p>6 And so there's a response saying, you 7 know, we can supplement it, we're still 8 learning.</p> <p>9 Then there's a larger paragraph below 10 there. And the very first sentence says, "The 11 secretary believes that publication of voter 12 data writ large may constitute misinformation. 13 The New Mexico voter file is a living document 14 that is constantly updated by state and county 15 agencies. If a private individual or entity 16 were to obtain a copy of the voter file, that 17 copy would be out of date and bearing erroneous 18 information before the private individual or 19 entity even had a chance to publish the copy. 20 The only proper, accurate way to look up voter 21 information is through the New Mexico secretary 22 of state or county clerks."</p> <p>23 Did I read that right?</p> <p>24 A. Yes.</p> <p>25 Q. And that's a statement that you swore to in</p>	<p style="text-align: right;">Page 128</p> <p>1 voter data may constitute misinformation? 2 A. And I think my question was: What is your 3 understanding of that definition? 4 Q. Well, I'm asking you, okay? I -- I mean, this 5 is your answer. I didn't choose those words. 6 So, I mean, do you agree with me that the 7 secretary -- and if not, just tell me. I mean, 8 if the secretary does not contend that posting, 9 you know, voter data from eight months ago is 10 itself misinformation, then we can -- we're 11 going to move on. But it sounds to me like the 12 secretary is saying that it does constitute 13 misinformation.</p> <p>14 A. I think I answered initially when we started 15 this line of questioning that providing and 16 publishing inaccurate, incomplete, out-of-date 17 data does provide a potential for 18 misinformation.</p> <p>19 Q. Okay. And what if -- what if the publication 20 actually discloses when the data file was 21 received, does that fix the problem or no?</p> <p>22 A. No.</p> <p>23 Q. Why not?</p> <p>24 A. Because I think that of our election 25 administrators or kind of really -- you know,</p>
<p style="text-align: right;">Page 127</p> <p>1 your response to these questions. And is that 2 still an accurate statement of the secretary's 3 position?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And so let me just go back. I mean, I 6 understand that -- the allegation that the 7 analysis that VRF published that accused -- or 8 that said that there was a discrepancy, the 9 contention that that is misinformation. I'm 10 asking you now, though, whether the publication 11 of voter data writ large as stated in that 12 response can also constitute misinformation?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. Can you just clarify for me --</p> <p>15 BY MR. GREIM:</p> <p>16 Q. Sure.</p> <p>17 A. -- obviously, I didn't use this word -- of what 18 you believe "writ large" is referring?</p> <p>19 Q. That's your answer, not mine, right? That's 20 not my answer, that's your answer.</p> <p>21 So you say the secretary believes the 22 publication of voter data writ large may 23 constitute misinformation.</p> <p>24 So I'm asking you: Given that statement, 25 do you agree with me that simply publishing the</p>	<p style="text-align: right;">Page 129</p> <p>1 the average voter, typically as -- isn't as 2 educated on this process. You know, we work to 3 educate them, but I don't think they're going 4 to understand the complexities if there's 5 someone who is making a claim of a discrepancy 6 without context.</p> <p>7 Q. Okay. And now I'm just -- I'm not asking you 8 about the discrepancy anymore, okay? We got 9 your full testimony on that.</p> <p>10 My question now is: Is the mere fact of 11 publishing old voter data, putting on the 12 Internet saying here is the New Mexico voter 13 data, this file was obtained in April of 2021, 14 is that misinformation? Is that the 15 secretary's position in this case?</p> <p>16 A. Our position is that it invites and provides 17 for a potential of misinformation.</p> <p>18 Q. Because the people who read it are not properly 19 educated and they may not understand the 20 disclosure?</p> <p>21 A. I think the data, without an understanding or 22 without context or without explanation, makes 23 it difficult to understand.</p> <p>24 Q. And the secretary's position is that posting 25 when and how the data was received isn't</p>

<p style="text-align: right;">Page 130</p> <p>1 enough, correct, to --</p> <p>2 A. Correct.</p> <p>3 Q. -- to correct the misinformation?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And why is that? It's because -- well,</p> <p>6 strike that. You answered why.</p> <p>7 Does the secretary of state have</p> <p>8 information in this case that particular users</p> <p>9 of VRF's website were misinformed when viewing</p> <p>10 the data and the disclosures online?</p> <p>11 A. Sorry, if you can repeat that.</p> <p>12 Q. Does the secretary of state have any</p> <p>13 information in this case that particular users</p> <p>14 of VRF were misinformed when accessing the data</p> <p>15 and the disclosures on VRF's website?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. Not particular users. I think I shared earlier</p> <p>that we had voters contact us out of concern</p> <p>for their data being on the site.</p> <p>20 BY MR. GREIM:</p> <p>21 Q. And, right, that's not my question. I'm asking</p> <p>22 you about worry that users of VRF are being</p> <p>23 misinformed.</p> <p>24 A. Did you say worry of it?</p> <p>25 Q. Yeah. I'm asking whether the secretary of</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Okay. Do you have any records of this?</p> <p>2 A. I can certainly go back and look.</p> <p>3 Q. We've already asked for it. Do you have -- did</p> <p>4 you personally speak to any voters who were</p> <p>5 confused about the data online?</p> <p>6 A. I do not personally. My team did.</p> <p>7 Q. Who?</p> <p>8 A. I would have to find the phone log, but in</p> <p>particular, we had a paralegal who was tracking</p> <p>things on behalf of the office and he received</p> <p>calls he made me aware of.</p> <p>12 Q. And you've produced all of your tracking</p> <p>13 spreadsheets already, right?</p> <p>14 A. Right.</p> <p>15 Q. When you say voters were confused -- so you</p> <p>16 said they were confused about who had actually</p> <p>17 posted the data online?</p> <p>18 A. Correct. We got voters calling us saying take</p> <p>me off your list that you have on the website.</p> <p>20 Q. Okay. So maybe VRF engaged in misinformation</p> <p>21 by not making it clear that it's VRF's website</p> <p>22 and not yours?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. We clearly had voters that did not understand</p> <p>who posted that or where it came from and</p>
<p style="text-align: right;">Page 131</p> <p>1 state has information that this misinformation</p> <p>2 is occurring?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Have you learned that someone has looked at the</p> <p>6 VRF website and become misinformed about the</p> <p>7 voter process?</p> <p>8 MS. LECOCQ: Objection.</p> <p>9 A. As a representative of the office, I can share</p> <p>that anecdotally we received concerned</p> <p>individuals contacting our office asking about</p> <p>discrepancies certainly, and asking about how</p> <p>they could get their data off the site. Those</p> <p>were the calls we were receiving.</p> <p>15 BY MR. GREIM:</p> <p>16 Q. Okay. So individuals --</p> <p>17 A. Confusion about understanding what was posted,</p> <p>confusion about how it got there. They</p> <p>believed we were posting their data. So there</p> <p>was certainly calls to our office about</p> <p>confusion related to Voter Ref posting data</p> <p>online.</p> <p>23 Q. Okay. Were they confused about what the data</p> <p>24 represented?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 133</p> <p>1 believed it was our office.</p> <p>2 BY MR. GREIM:</p> <p>3 Q. Okay. The secretary of state doesn't make any</p> <p>4 allegation here that VRF is impersonating the</p> <p>5 secretary of state or --</p> <p>6 A. No.</p> <p>7 Q. -- trying to act as if it is an official</p> <p>8 office?</p> <p>9 A. No.</p> <p>10 Q. Okay. We've noticed online that there's a new</p> <p>11 tab that says that the online system has</p> <p>12 real-time updates now.</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 BY MR. GREIM:</p> <p>15 Q. Is that correct?</p> <p>16 A. I'm not clear as to what you're referring to.</p> <p>17 Q. Okay. Going on the secretary of state's</p> <p>18 website -- well, you don't have it printed off</p> <p>19 here. But let me just ask you: Does the</p> <p>20 secretary of state hold out that its website is</p> <p>21 up to date, it's like to the minute in</p> <p>22 real-time?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. I'm just -- I mean, we have a website --</p> <p>25 BY MR. GREIM:</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. You have a website -- 2 A. -- but I don't know what data would be being updated in real-time on the website. 3 Q. Okay. Well, there's -- okay. There's a 4 website and there's a portal. Let's talk about 5 that. Maybe I'm using the wrong term. 6 A. Okay. 7 Q. There is a -- there is a portal, is there not? 8 A. A voter information portal. 9 Q. Right. And is that updated in real-time? 10 A. Yes. 11 Q. Okay. And any person who goes on there who 12 enters the correct information for a voter is 13 going to get the absolute most up-to-date 14 version of voter data for that voter, correct? 15 A. Yeah, that source is our voter registration database. 16 Q. The database itself? 17 A. Yes. 18 Q. And anyone with the first and last name and 19 birthday of a voter can pull that voter's 20 information off the website, correct? 21 A. Correct. 22 Q. Now, is the secretary of state aware of anyone 23 using its website for an improper purpose?</p>	<p style="text-align: right;">Page 136</p> <p>1 on the portal, does it? 2 A. I don't believe so. 3 Q. Is the secretary of state aware of anyone using 4 VRF's website for illegal purposes? 5 MS. LECOCQ: Objection. 6 A. Using the website? Sorry, can you -- 7 BY MR. GREIM: 8 Q. Sure. Let me back up. So there was a time 9 when VRF had New Mexico voter data available on 10 its website, correct? 11 A. Correct. 12 Q. And I'm just asking whether the secretary of 13 state knows of anyone accessing the voter data 14 on VRF's website using it for an improper 15 purpose? 16 MS. LECOCQ: Objection. 17 A. We wouldn't have a way to track that information. 18 BY MR. GREIM: 19 Q. I understand that. I understand that you don't 20 have some special way to look into it. I'm 21 just asking if you have any information that 22 that's ever occurred? 23 A. And specifically you asked me that somebody was stalking someone --</p>
<p style="text-align: right;">Page 135</p> <p>1 MS. LECOCQ: Objection. 2 BY MR. GREIM: 3 Q. Let me -- yeah, let me ask you a better 4 question. 5 Is the secretary of state aware of anyone 6 using its website to stalk other people? 7 A. Our website? 8 Q. Yeah, using the portal. 9 A. I don't have any knowledge of that. 10 Q. Okay. Let me -- would the secretary of state 11 know if someone were just putting someone's 12 name and birthday into the portal and learning 13 where they live? 14 A. We wouldn't unless we were made aware. 15 Q. And the secretary of state doesn't require 16 people using the portal to certify that they're 17 using the information to look up their -- that 18 the portal -- to look up their own information, 19 do they? 20 A. I haven't walked through the screens in a while, but I don't recall any sort of affirmation. 21 Q. In fact, it doesn't require any affirmation 22 about the purposes for which someone is 23 entering in the information and making a query</p>	<p style="text-align: right;">Page 137</p> <p>1 Q. Well, I -- yeah, let's start with stalking. 2 Are you aware of anyone getting on the VRF 3 website and the New Mexico data was posted and 4 they were using that information to stalk 5 someone? 6 A. I don't have an awareness of somebody stalking someone off that. 7 Q. Okay. Well -- and let's go to some other 8 things, too. Are you aware of anyone getting 9 onto the VRF website and using it to come up 10 with a list to solicit -- to make commercial 11 solicitations? 12 A. I don't have that specific information, no. 13 Q. Okay. I mean, I guess let's just -- I'm not 14 going to go through a long list. Is it fair to 15 say the secretary of state has no information 16 about anyone getting on the VRF website, when 17 it had the New Mexico voter data, and using it 18 for any improper purpose? 19 MS. LECOCQ: Objection. 20 A. You're asking me to kind of -- and just so I'm clear, are you asking me if we have an awareness of a connection to a voter being harassed, stalked, any sort of criminal -- like when you say improper use --</p>

<p style="text-align: right;">Page 138</p> <p>1 BY MR. GREIM:</p> <p>2 Q. Okay. All right. We'll go through. So I'm 3 asking -- I mean, I asked about stalking 4 already. I think we got an answer to that 5 question. Okay.</p> <p>6 Let's -- let's go criminal purposes. 7 Does the secretary of state have any 8 information that any person has gotten on the 9 VRF website that had the New Mexico voter data 10 and used that data for a criminal purpose?</p> <p>11 A. No.</p> <p>12 Q. Does it have any information that any person 13 got on the VRF website when it had New Mexico 14 voter data and used that data to engage in 15 misinformation about elections?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. I don't have any direct knowledge.</p> <p>18 BY MR. GREIM:</p> <p>19 Q. Okay. Do you have indirect knowledge that this 20 happened?</p> <p>21 A. I think that our office -- you know, we 22 received calls. I spoke to questions and 23 concerns from voters. And we also had 24 individuals that contacted our office at a 25 similar window of time related to a separate</p>	<p style="text-align: right;">Page 140</p> <p>1 said you had indirect knowledge. 2 So let me ask you this: Do you have 3 any -- my question that you answered, seeming 4 to have information, was that you didn't know 5 of any connection between the two groups. 6 Now I'm going to ask you: Do you have 7 any information at all that the Otero County 8 group got their data from VRF?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. No.</p> <p>11 BY MR. GREIM:</p> <p>12 Q. In fact, the secretary of state's office now, I 13 think, knows how the Otero County group got 14 their data, doesn't it?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. I don't know that we're here to speak on that, 17 but I don't.</p> <p>18 BY MR. GREIM:</p> <p>19 Q. Okay. Do you have any evidence that VRF has 20 manipulated the data that was posted on its 21 website?</p> <p>22 A. No.</p> <p>23 Q. How many voters have canceled their voter 24 registration because of VRF's publication of 25 voter data on its website?</p>
<p style="text-align: right;">Page 139</p> <p>1 issue that was taking place in one of our 2 counties.</p> <p>3 Q. Who were the voters who called?</p> <p>4 A. I think we provided the list of any voters that 5 we received that felt like they were being 6 potentially intimidated based on an issue 7 happening in one of our counties.</p> <p>8 Q. Okay. That's Otero County, right?</p> <p>9 A. Correct.</p> <p>10 Q. Does the secretary -- and now it's been well 11 over a year. Does the secretary of state -- 12 well, that may not be right. It's been some 13 time.</p> <p>14 Does the secretary of state's office have 15 any information that the Otero County group was 16 connected in any way with VRF?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. I don't have any understanding that they were 19 directly connected, no.</p> <p>20 BY MR. GREIM:</p> <p>21 Q. Do you have any --</p> <p>22 A. I think your question was: Do we believe that 23 anyone may have obtained data through the 24 website and used it improperly.</p> <p>25 Q. That was the original question. Okay. You</p>	<p style="text-align: right;">Page 141</p> <p>1 MS. LECOCQ: Objection.</p> <p>2 A. Aside from the inquiries and the calls and the 3 log that you've been provided tied to voters 4 and concerns with this issue, there would be no 5 way for us to have a voter affirm that.</p> <p>6 BY MR. GREIM:</p> <p>7 Q. So let's just be very clear. The secretary of 8 state has no knowledge of any voter that has 9 canceled his or her registration because of 10 VRF's website?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I don't. I think we have knowledge that voters 13 were concerned --</p> <p>14 BY MR. GREIM:</p> <p>15 Q. Okay.</p> <p>16 A. -- and reached out asking us how they could 17 remove themselves because they didn't want to 18 potentially risk their information being made 19 public. I do not have a list of voters that 20 have affirmed that they canceled because of 21 Voter Ref.</p> <p>22 Q. Any every phone call you received, that inquiry 23 has been documented and produced to us, 24 correct?</p> <p>25 A. Any that staff tracked have been, yes.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q. Okay. Do you claim that there are others that 2 we don't know about that staff didn't track? A. I think, you know, initially when we were first 3 learning about those concerns, we weren't at a 4 place to have that process established. So I 5 do believe there were some additional, but I do 6 feel like the majority were tracked.</p> <p>7 Q. I'm going to ask you a little bit about the 8 interest that the secretary of state has 9 alleged it's trying to advance by enforcing the 10 statutes at issue here. You've actually 11 covered a little bit of this already, but 12 there's a few things we didn't cover. 13 14 So I understand the secretary of state to 15 contend that the -- that one reason for 16 requiring the affidavit process that we've 17 talked about and requiring that users of the 18 data directly request that from the secretary 19 of state is in order to generate revenue to run 20 the voter data system. 21 A. Is that -- 22 Q. Is that correct? 23 A. Is that somewhere? 24 Q. Yeah, I don't -- I don't have it. It's in 25 your -- I mean, I'm just going to ask a</p>	<p style="text-align: right;">Page 144</p> <p>1 What is the main reason that the secretary of 2 state does not want VRF to be able to request 3 the data from the secretary of state's office 4 and then share it online with people who agree 5 to use it for VRF's purposes? What's -- what's 6 the reason why the secretary of state wants to 7 enforce that?</p> <p>8 MS. LECOCQ: Same objection. A. Sure. The secretary of state's office wants to 9 follow state law. We want to ensure that we 10 are adhering to the appropriate process that's 11 defined in our state law. And we feel like the 12 intention behind an appropriate administration 13 of that provision provides for us to maintain a 14 record of individuals that are requesting the 15 data.</p> <p>16 I think it's important because it's the 17 only mechanism to be able to go back and track 18 if somebody does use it unlawfully. If we do 19 see an instance of stalking or harassment or 20 intimidation, it is the only way that we have 21 an ability to manage who is receiving that data 22 and potentially a tool for enforcement to 23 follow the law. That's our priority.</p> <p>24 BY MR. GREIM:</p>
<p style="text-align: right;">Page 143</p> <p>1 question. If you disagree that that's one of 2 the reasons to enforce it, then that's okay, 3 we'll just move on. Or if you're not sure, 4 we'll just move on. 5 MS. LECOCQ: Sorry. I just want to note 6 that our standing objection to legal 7 contentions are still standing. 8 BY MR. GREIM: 9 Q. So is an important reason to require groups 10 like VRF to request the data directly from the 11 secretary of state and then not share it with 12 people outside the organization that the 13 secretary of state wants to generate revenue 14 from user fees to help pay for the voter data 15 system?</p> <p>16 MS. LECOCQ: Objection. 17 A. I think from the office's perspective, I think 18 that's a reason. That is not our primary 19 reason by any means.</p> <p>20 BY MR. GREIM: 21 Q. Okay. But it's one of the reasons? 22 A. It is a reason to make sure we have revenue to 23 maintain our system, but that is absolutely not 24 the priority.</p> <p>25 Q. What would you say -- what is the priority?</p>	<p style="text-align: right;">Page 145</p> <p>1 Q. And has the secretary of state actually used 2 its record of individuals who requested the 3 data to investigate instances of harassment? 4 MS. LECOCQ: Objection. 5 A. Yes. 6 BY MR. GREIM: 7 Q. It did so in the Otero County case, right? 8 A. Correct. 9 Q. Other than Otero County, has it done it any 10 other time? 11 A. Other than a review -- not for harassment, but 12 we did take a look at our logs when we felt 13 like there was a potential violation by 14 Voter Ref by posting it online. That was 15 another opportunity for us to refer to that 16 record. And we were able to identify that it 17 had not been lawfully obtained.</p> <p>18 Q. So Otero County and VRF. Any other examples? 19 A. The Local Labs in the distribution of the data. 20 Q. Okay. The Otero County and VRF, Local Labs, 21 any other examples? 22 A. No. 23 Q. Okay. So does the secretary of state require 24 Catalyst or i360 or Aristotle to share the 25 identities of its customers who purchased the</p>

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1 data?

2 A. I don't think we require any requester to

3 identify anything more than what's on the

4 affidavit.

5 Q. Well, let's say the secretary of state did

6 require their requesters to keep a log of each

7 person who shared the data with them. Why

8 wouldn't that equally satisfy your interest of

9 being able to trace possible abuses?

10 A. Number one, we don't require that.

11 Q. I understand. I'm asking why wouldn't

12 requiring that yield the same result?

13 A. Because it's not following the statute.

14 Q. I understand that. I understand what the

15 statute says. My question is: Why wouldn't

16 requiring the requesters who first get the data

17 to keep a log of who they share it with achieve

18 the same result of compiling a record of people

19 who access the data?

20 MS. LECOCQ: Objection.

21 A. I think that we're -- there's only -- that's

22 one piece of the statute, right? There's a

23 secondary piece that requires a payment. And

24 there's also a secondary piece that requires an

25 affirmation of that separate entity to affirm

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1 that they will also comply with the statute.

2 BY MR. GREIM:

3 Q. Okay. And I -- we'll get to the other uses of

4 the statute. I'm sticking right now to the

5 interest in being able to trace who had access

6 to the data, okay? I'm not asking about

7 payment right now. I'm asking about why -- I

8 mean, and if you don't know, you don't know.

9 But my question is: Why wouldn't requiring the

10 requesters to maintain a record of individuals,

11 whom they share the data, yield the same

12 benefit as keeping your own list of the initial

13 set of requesters? Either way you've got a

14 list of everybody who accessed the data.

15 MS. LECOCQ: Objection.

16 BY MR. GREIM:

17 Q. Why isn't it good enough to have the requesters

18 keep their own list?

19 A. Sure. That's one piece of my answer, but I

20 gave you other reasons. So there was, you

21 know, a broader picture. And so we can't just

22 point to one piece of the statute, right? We

23 are required to administer the statute in its

24 entirety --

25 Q. I know.

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1 A. -- and so that's our obligation, that's our

2 authority. And the hypothetical that you're

3 speaking to just isn't reality.

4 Q. Well, I'm asking about the State's interest.

5 I'm not asking you what the statute says. In

6 this case, on the constitutional question there

7 are questions of fact about what is the State's

8 interest and is this the most narrowly tailored

9 version of a law. Okay. So I'm not asking you

10 anymore about what the law says. I'm asking

11 you about what does the State lose -- how is

12 the State worse off by simply having the

13 requesters keep a record of the individuals to

14 whom they grant access so that if there is an

15 illegal use the secretary of state can simply

16 go to the requesters and say who have you

17 shared it with?

18 MS. LECOCQ: Objection.

19 BY MR. GREIM:

20 Q. Why is that insufficient to meet the interest

21 that you raised regarding tracing who dealt

22 with it?

23 MS. LECOCQ: Objection.

24 A. And I would just reiterate that that's one

25 interest. So what we lose is the opportunity

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1 to kind of respond to all of our interests,

2 right? That's not our only interest.

3 BY MR. GREIM:

4 Q. Okay. Let's go ahead -- let's talk about the

5 other interests then. So you lose the ability

6 to generate revenue from the other requesters,

7 right?

8 A. Sure.

9 Q. Okay. And what else do you lose, if there's

10 other things you lose, too? You mentioned

11 something else earlier.

12 A. I don't remember saying that we lose

13 anything --

14 Q. Let me -- I'll help you. You said -- I think

15 you said there's the State interest in making

16 sure that the individuals who get access to the

17 data agree to use it for the purposes that are

18 permitted under New Mexico law. You didn't use

19 those words, but I think that's what you were

20 getting at. Do you recall that?

21 A. And I think, you know, you asked me what's our

22 priority, what's our interest, and I think I

23 said first and foremost it's to follow the

24 state law. And so I'm just reiterating that

25 that is our interest. And there's not just

<p style="text-align: right;">Page 150</p> <p>1 this one provision, you know, it is a bigger 2 picture than that.</p> <p>3 Q. I understand. And we can stipulate that the 4 secretary of state's office says that it wants 5 to follow the state law. You've said that. 6 That's not what I'm talking about, though. 7 That's not what these questions go to. I'm 8 trying to understand the interest. 9 So we've talked about the payment 10 interest. We've talked about the tracing 11 interest. And I'm trying to get you now to 12 talk about the third interest that I could 13 swear I heard you say, I think I've read in 14 your briefing, which is the State wants to have 15 some way to ensure that the people who receive 16 access to the data are going to use it for the 17 purposes that are allowed under the statute. 18 Do you agree that that's --</p> <p>19 A. I agree.</p> <p>20 Q. That's an important State interest, isn't it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And the way that you satisfy that 23 interest now is by having the person who 24 directly contacts the SOS's office sign the 25 affidavit that lists what the purposes are,</p>	<p style="text-align: right;">Page 152</p> <p>1 same use requirements that the initial 2 requester manifested their assent to. So 3 what's lost by having the person who receives 4 it is from initial requester agree to the same 5 conditions?</p> <p>6 A. Like, by how -- like, through what mechanism?</p> <p>7 Q. Well, for example, by on the website saying I 8 agree to only use it for these purposes before 9 getting access to it?</p> <p>10 A. I think, number one, for uniformity, generally, 11 it's important that when our office is 12 prescribing a form, it's our official form, I 13 think we want to maintain that uniformity and 14 consistency of the election polls overall. 15 But, two, I think we lose the opportunity to 16 educate directly from our office and to receive 17 that affirmation directly to our office.</p> <p>18 Q. Okay. So there's some benefit in the fact that 19 the form comes directly from the office?</p> <p>20 A. Consistent and it's uniform.</p> <p>21 Q. Okay. Okay, so -- okay, I understand. Any 22 other interests there, other than uniformity?</p> <p>23 A. Not in addition to what we've already gone 24 over.</p> <p>25 Q. Okay. Let me ask you about the Safe at Home</p>
<p style="text-align: right;">Page 151</p> <p>1 right?</p> <p>2 A. Whoever is going to receive the data, completes 3 the affidavit affirming those items.</p> <p>4 Q. Okay. And so my question to you -- and you 5 would agree that, from the State's perspective, 6 that is sufficient -- the affidavit is 7 sufficient to satisfy the State's interest in 8 ensuring that the recipients of the data who 9 came and requested it from the secretary of 10 state's office, understand that what they're 11 supposed to do and not do with the data, right?</p> <p>12 A. Yes.</p> <p>13 Q. And so my question to you is: How does the 14 State lose anything by having the individuals 15 who might receive access to the data from the 16 initial requesters also agree that they are 17 going to use it for the purposes permitted 18 under New Mexico law? What's lost there from 19 the State's perspective?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 BY MR. GREIM:</p> <p>22 Q. If anything?</p> <p>23 A. Are you saying also agreed, what, through a 24 different entity?</p> <p>25 Q. Yeah, they manifest their assent to the extent</p>	<p style="text-align: right;">Page 153</p> <p>1 program; that's come up a few times as well. 2 There are some people who want to be removed 3 from the list who don't satisfy the 4 Safe at Home program, correct?</p> <p>5 A. Correct.</p> <p>6 Q. And so is anything stopping New Mexico from 7 changing the requirements of the Safe at Home 8 program?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 BY MR. GREIM:</p> <p>11 Q. Let me -- let me change the question. Is there 12 anything keeping New Mexico from broadening the 13 Safe at Home program to reach additional people 14 who don't want their voter data disclosed?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Yes.</p> <p>17 BY MR. GREIM:</p> <p>18 Q. What?</p> <p>19 A. So I think that the statute surrounding the 20 Safe at Home program is very specific to a 21 certain population within the state of New 22 Mexico.</p> <p>23 Q. Okay. And my question is: Is there anything 24 stopping New Mexico from just broadening that 25 population --</p>

<p style="text-align: right;">Page 154</p> <p>1 MS. LECOCQ: Objection. 2 BY MR. GREIM: 3 Q. -- and saying there are other people now that 4 we want to let into the Safe at Home program? A. Sure. It's -- the Safe at Home program is not 5 specific to just voting, right; that's one 6 piece of that program. But it is a larger 7 program that is meant to support victims of 8 domestic violence. So it's not just a 9 confidential address necessarily. It is -- it 10 is not just specific to voting.</p> <p>11 Q. Okay. A. So there are implications for that population 12 outside of just voting.</p> <p>13 MR. GREIM: Okay. We've been going for 14 little over an hour. Why don't we take -- 15 let's take one more break for maybe another ten 16 minutes. (WHEREUPON, at this time a brief recess 17 was taken.)</p> <p>18 BY MR. GREIM:</p> <p>19 Q. All right. I think we're getting closer here 20 to the end. But I'm going to ask you about now 21 the denials of VRF requests for data over the 22 last year or two.</p>	<p style="text-align: right;">Page 154</p> <p>1 talking about litigation counsel who was always 2 up to speed presumably on what's happening. So 3 I'm trying to do with this without compromising 4 the privilege. 5 Is a request being made of the attorney 6 general's office about whether a response to a 7 document request is lawful or not? 8 MS. LECOCQ: Objection. A. A response to a document request from Voter 9 Reference Data -- I mean vote Voter Reference 10 Foundation --</p> <p>11 BY MR. GREIM: 12 Q. Right. A. Yeah, our -- Dylan Lange and our attorneys 13 representing us in this case. 14 Q. Okay. So litigation counsel are -- the lawyers 15 in this case for the attorney general's office 16 are giving advice to the secretary of state 17 about responses to the requests? 18 MS. LECOCQ: Objection. Can we -- sorry, 19 can you just give me one second? 20 MR. GREIM: Sure. 21 MS. LECOCQ: I just want to state on the 22 record this is getting really close to -- and I 23 understand it's super tricky with the attorney</p>
<p style="text-align: right;">Page 155</p> <p>1 I want to first know who was involved, 2 what staff were involved in the secretary's 3 office in responding to VRF requests for data. A. Myself and our attorneys. 4 Q. Okay. You say our attorneys. Who are those 5 attorneys? A. Dylan Lange and representation from the 6 attorney general's office. 7 Q. Okay. Now, when you say representation 8 from the attorney general's office, are you 9 talking about -- is that -- is the secretary of 10 state getting legal advice from the attorney 11 general's office about whether to respond to 12 requests? 13 MS. LECOCQ: Objection. A. With relation to this case? 14 BY MR. GREIM: 15 Q. Okay. Well, let me -- I'm not going to ask you 16 the contents of the advice. I'm just wanting 17 to establish who is asking the question and, 18 you know, basically who is involved in the 19 communication, okay? 20 So we know the name of one attorney, 21 Lange, okay. And then when you say the AG's 22 office, I'm trying to make sure we're not just</p>	<p style="text-align: right;">Page 155</p> <p>1 general's office, but the attorney general's 2 office, by statute, represents these agencies. 3 So if what you're wanting her to answer is who, 4 I don't think we have any issue with that. I 5 think where it gets a little bit tricky is 6 any -- kind of anything beyond that, you know, 7 what questions were asked, what specific 8 topics, what's being sought, and that's really 9 what is, kind of, our objection. 10 MR. GREIM: I'm not going to be beyond 11 the question I just asked. 12 MS. LECOCQ: Okay. 13 BY MR. GREIM: 14 Q. Which is, you know, advice on responding to the 15 request, not asking what the advice was or what 16 questions were lodged. It's who at the AG's 17 office is giving advice on how to respond to 18 the VRF request. That's it. A. What individual? 19 Q. Yes. A. Yeah, at the time was Olga. 20 Q. Okay. And she was still there in November or 21 she was gone? 22 A. I don't know the exact day, I'm sorry. 23 Q. Okay. Was it anyone other than Olga?</p>

<p style="text-align: right;">Page 158</p> <p>1 A. No. 2 Q. Okay. 3 A. Just Dylan and Olga. 4 Q. Sharon Pino involved at all? 5 A. Yes. 6 Q. Okay. What was her role? 7 A. Again, it's a collaborative effort to kind of 8 understand all of the facts, have a 9 conversation, a discussion, and make a 10 determination. So she participated like the 11 rest of us. 12 Q. Well, who made the final decision in the SOS's 13 office? 14 MS. LECOCQ: Objection. 15 A. I don't think there was one single person. It 16 was, again, a collaborative decision. 17 BY MR. GREIM: 18 Q. Okay. If you could, please go back and turn to 19 Exhibit 2, Interrogatory Number 15. It's on 20 page 9 -- 9 and 10 is where I want you to look. 21 Okay. And so you'll see Interrogatory Number 22 15, it says, "Identify each person who 23 participated in each decision not to provide 24 data in response to a VRF request or to ignore 25 a VRF request, and the person, if any, who made</p>	<p style="text-align: right;">Page 160</p> <p>1 need to be changed, decision to do so was made 2 by Sharon Pino? 3 A. I think the only thing I would add is, you 4 know, probably upon advice of counsel and, I 5 guess, in consultation with myself. 6 Q. Okay. And let me talk about the 7 decision-making process. Did it occur by 8 e-mail? 9 A. No, I feel like it was a meeting, either 10 virtual -- it was a virtual meeting. 11 Q. Okay. Because there were a couple of denials, 12 all right. And so each time there was nothing 13 committed to writing. It was all done orally? 14 A. Yes. 15 Q. Okay. So there will be no -- have you searched 16 for documents that discussed the decision? 17 A. No, but I don't believe there to be any. I 18 recall the verbal conversations. 19 Q. I mean, do you know all the decision -- all the 20 communications that Sharon Pino may have had 21 with others about it? 22 A. I don't believe Sharon Pino had any additional 23 communications. The only thing I can't speak 24 to is if Dylan had any communications, but I 25 feel like the decision was made through a</p>
<p style="text-align: right;">Page 159</p> <p>1 the final decision." And then it wants the 2 titles. That's the request. 3 And now let's go to the answer, next 4 page. "Subject to, and without waving 5 objections, the secretary states the secretary 6 never ignored a request." Is that correct? 7 A. Yes. 8 Q. Okay. "If such a request was received, 9 reviewed, and subsequently denied, the decision 10 to do so was made by Sharon Pino on advice of 11 counsel." Now, is that correct or no? 12 A. I don't think it's incorrect. Again, you know, 13 we all had a role in making this decision. At 14 the end of the day, Sharon is deputy secretary 15 of state, so I don't think there's anything 16 incorrect here. 17 Q. Okay. Just -- since Sharon Pino is the only 18 person to -- specifically mentioned here, it's 19 just odd that you didn't mention her in your 20 response and then you seemed to say she was 21 just part of the team. So I've got a response 22 from you and I've got a -- sort of a draft from 23 counsel. I just want to meld the two, if I 24 can. 25 I mean, do you -- does this statement</p>	<p style="text-align: right;">Page 161</p> <p>1 virtual meeting. 2 Q. And the decision was not made by lawyers, 3 right, it was made by Sharon Pino? 4 A. That's not what I said. I said it was made in 5 consultation with a group of us, including 6 guidance from our attorneys. 7 Q. Okay. Well, I mean, was Sharon Pino the final 8 decision maker or no? 9 A. I think what I asked to be changed in the 10 statement was that Sharon Pino, upon advice of 11 counsel, in consultation with Mandy Vigil. 12 Q. Okay. 13 A. So I think that represents my testimony. 14 Q. Okay. Well, specifically, I'm going to be very 15 clear about this, the decisions were not 16 actually delegated to counsel; they were made 17 by you and Sharon Pino? 18 A. Upon advice of counsel. 19 Q. Upon advice of counsel? 20 A. Yes. 21 Q. Okay. Okay. Well, I'm about to ask you the 22 basis for the decision, okay? And I'm just 23 going to say this, I mean, I -- if you say, you 24 know -- if you say "We relied on counsel," then 25 I'm going to ask -- at that point I'm entitled</p>

<p style="text-align: right;">Page 162</p> <p>1 to ask and I'm going to ask what counsel advised, 2 one way or another, from you or from counsel. 3 If you just tell me the basis of the decision, 4 you don't need to tell me that, well, part of 5 this was what counsel wanted or this is -- and 6 you can protect the privilege by not explaining 7 to me what parts of what you tell me are from 8 an attorney. I'm just going to say that while 9 we're on --</p> <p>10 MS. SCHREMMER: I object to your 11 definition about privileged communication.</p> <p>12 BY MR. GREIM:</p> <p>13 Q. I mean, maybe we have a dispute. We're about 14 to find out, I think. But I certainly don't 15 think any part of the reasoning -- the basis 16 for any of the decisions can be shielded 17 because a lawyer was involved. It's possible 18 to tell me the reasoning without saying, oh, 19 this is what our lawyer told us, but we'll see. 20 We'll let it play out if there needs to be an 21 objection and instruction.</p> <p>22 MS. LECOCQ: Can you give me one second? 23 We might -- let me talk to Kelsey. And then I 24 might just give her a little bit of advice.</p> <p>25 MR. GREIM: Sure. Okay. Let's go off</p>	<p style="text-align: right;">Page 164</p> <p>1 A. I reached out to Dylan. 2 Q. Okay. Did you ask him for legal advice of some 3 kind? 4 A. Yeah. 5 Q. Okay. Did he provide you legal advice in 6 response? 7 A. Yes. 8 Q. All right. And is the first line of this 9 e-mail correct for Dylan's contact with the AG, 10 "...we are not fulfilling records from VoteRef" 11 (verbatim)? 12 A. There was clarification related to voter data 13 requests, but, yes. 14 Q. Okay. And has this policy ever changed at the 15 secretary of state's office? 16 A. What policy? 17 Q. "Per Dylan's contact with the AG, we are not 18 fulfilling records request from VoteRef"? 19 A. I don't think it was a policy, but certainly it 20 is based on legal advice related to this case 21 and our understanding of the use of the data 22 that that's still the position we maintained. 23 Q. Okay. What will VRF need to do in order to 24 obtain voter information from the secretary of 25 state's office?</p>
<p style="text-align: right;">Page 163</p> <p>1 the record for two minutes. 2 (WHEREUPON, at this time a brief recess 3 was taken.) 4 (WHEREUPON, Deposition Exhibit 7 was 5 marked for identification.) 6 BY MR. GREIM: 7 Q. Okay. I'm going to hand you what we've marked 8 as Exhibit 7, and you've seen this before. I'm 9 just going to ask you if you recognize this 10 e-mail? 11 A. I do. 12 Q. Okay. This is a Patrick Rostock e-mail to you 13 on March 11, 2022? 14 A. Yes. 15 Q. And it relates to ticket number 4148 (sic). 16 I'm just reading from the subject line, 17 "[External] Information Request," right? 18 A. Right. 19 Q. And you see there's a question from Voter 20 Reference Foundation at the bottom of the 21 e-mail chain? 22 A. Uh-huh. 23 Q. And then -- do you recall getting this e-mail? 24 A. Yes. 25 Q. Okay. What did you do in reaction to this?</p>	<p style="text-align: right;">Page 165</p> <p>1 A. I think it is going to need some clarity from 2 legal counsel to respond to that. I think it's 3 all relevant to this case in particular. 4 Q. Well, why can't VRF simply fill out the current 5 affidavit and receive voter data? 6 A. We have not stated that you cannot. 7 Q. Well, that's -- I'm asking you that. I'm 8 asking you, even if the current -- I mean, we 9 have a dispute about whether the current 10 affidavit actually follows New Mexico law, but 11 put that aside. If VRF simply fills out the 12 current affidavit for voter data, is there 13 any -- is there any reason that the secretary 14 of state's office wouldn't fill the request? 15 A. Again, I think barring any guidance from our 16 attorney related to this case, no. I think our 17 concern is relevant in that there's an 18 understanding that it will be posted online; 19 that's the concern. 20 Q. So even if VRF fills out an affidavit that says 21 "I won't share it on the Internet," VRF is not 22 going to get the data because of a concern that 23 it might show on the Internet anyway? 24 A. I don't think I said that. 25 Q. Well, I want to understand you.</p>

<p style="text-align: right;">Page 166</p> <p>1 A. So if VRF submits an affidavit and completes 2 it, I think there is a review of that affidavit 3 and a determination to provide the data.</p> <p>4 Q. When you say it --</p> <p>5 A. I don't think I've said that we wouldn't.</p> <p>6 Q. Okay. Well, that's important because I thought 7 my question actually posed that very 8 hypothetical, that VRF fills out the affidavit 9 and submits it to you. I just wonder if 10 there's any reason why the secretary of state 11 would still not produce the data.</p> <p>12 A. It would only be based on legal guidance.</p> <p>13 Q. Well, in other -- when you say only based on 14 legal guidance, you mean you're holding out 15 that attorneys might tell you not to produce 16 the data anyway?</p> <p>17 A. I think there's a potential, yes, based on 18 concerns of it being posted online.</p> <p>19 Q. Okay. So is VRF in a position where the 20 secretary of state doesn't feel that it can 21 trust VRF's affidavit?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. What affidavit, I'm sorry?</p> <p>24 Q. The affidavit we've just been talking about.</p> <p>25 A. Ours, our prescribed form, completing it?</p>	<p style="text-align: right;">Page 168</p> <p>1 there was still a concern that VRF might post 2 the data online anyway?</p> <p>3 A. There's currently active litigation with Voter 4 Reference Foundation, so any interaction we 5 would engage with our legal counsel, yes.</p> <p>6 Q. Okay. So part of the -- so it sounds like part 7 of the block for VRF getting the data is the 8 fact that there's ongoing litigation, is that 9 correct?</p> <p>10 A. I don't know if there is a block. I'm saying 11 because there is active litigation, it is a 12 usual process to consult with our attorneys.</p> <p>13 Q. Okay, fair enough. But can the secretary of 14 state commit right here, right now, that if VRF 15 fills out the affidavit, as required by New 16 Mexico law, it will produce the data requested?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. I think I have responded that because there's 19 an active litigation, that we would seek 20 guidance from our counsel.</p> <p>21 (WHEREUPON, Deposition Exhibit 8 was 22 marked for identification.)</p> <p>23 BY MR. GREIM:</p> <p>24 Q. I'm going to hand you what we've marked as 25 Exhibit 8. Do you recognize this document?</p>
<p style="text-align: right;">Page 167</p> <p>1 Q. Correct.</p> <p>2 A. But in that you are saying you're going to make 3 some sort of affirmation that you're not going 4 to put it online?</p> <p>5 Q. No, no. I'm saying if VRF -- I want to be 6 clear here. I thought we were, but I -- it 7 seems vague.</p> <p>8 If VRF fills out the current affidavit -- 9 on -- currently online, for the secretary of 10 state, is there any reason at all that the 11 secretary of state would cite to still refuse 12 to produce the voter data to VRF?</p> <p>13 A. And, again, I said as long as the form is 14 completed and we consult with our attorney, if 15 there is no concern related to it being posted 16 online, based on the circumstances of this 17 case, I foresee no reason to deny that.</p> <p>18 Q. Okay. Well, it's that middle hedge that is 19 very important in this case.</p> <p>20 A. Well, that's the reality.</p> <p>21 Q. Well, I mean, so would the secretary of 22 state -- so what you're telling me is, in fact, 23 the secretary of state would not simply produce 24 the data if it received an affidavit, it would 25 first talk to counsel and determine whether</p>	<p style="text-align: right;">Page 169</p> <p>1 A. I do.</p> <p>2 Q. What is this?</p> <p>3 A. It is a request to our office for records.</p> <p>4 Q. Okay. And it is accompanied by -- something 5 might be wrong. Can I look at your version 6 quickly? It's accompanied by a couple of 7 affidavits, correct, under Exhibit B?</p> <p>8 A. Yes.</p> <p>9 Q. Now, take a second to look at these affidavits. 10 Is there anything irregular or altered in these 11 two affidavits?</p> <p>12 A. I don't believe this is our most current form. 13 I think this is an outdated version.</p> <p>14 Q. Okay. Is that a reason to reject a request?</p> <p>15 A. No.</p> <p>16 Q. And, in fact, do you recall when I asked you 17 this at your earlier testimony you stated that 18 secretary of state would accept all versions of 19 the form as it changed over time, right?</p> <p>20 A. Correct, as long as it provides the 21 information.</p> <p>22 Q. And is there anything lacking on these two 23 affidavits?</p> <p>24 A. No.</p> <p>25 Q. Okay. Now, this request was denied, right?</p>

<p style="text-align: right;">Page 170</p> <p>1 A. Yes.</p> <p>2 Q. I'm going to -- and one of the reasons was that</p> <p>3 the secretary of state was concerned that VRF</p> <p>4 was going to take the information and post it</p> <p>5 online, right?</p> <p>6 A. Right.</p> <p>7 Q. Okay. And the basis for that was actually</p> <p>8 something that I put in my letter, right?</p> <p>9 A. Basis for?</p> <p>10 Q. For the concern.</p> <p>11 A. Yes.</p> <p>12 Q. All right. And specifically it's page 4 of my</p> <p>13 letter. Can you go to page 4?</p> <p>14 A. Okay.</p> <p>15 Q. And let's go to the third paragraph where I</p> <p>16 talk about the request for records. And you'll</p> <p>17 see that it's about two different projects,</p> <p>18 above there, and then I say in my third</p> <p>19 paragraph -- or, I'm sorry, the second full</p> <p>20 unnumbered paragraph, "VRF's intended election</p> <p>21 use comprises two distinct projects. For its</p> <p>22 first project, just as VRF publishes voter data</p> <p>23 for many other states, and as it recently</p> <p>24 published voter data in New Mexico, VRF intends</p> <p>25 to publish the requested information online for</p>	<p style="text-align: right;">Page 172</p> <p>1 description, the second one has a different</p> <p>2 one, right?</p> <p>3 A. One is asking for county and precinct, is that</p> <p>4 the difference?</p> <p>5 Q. Right. So, I mean, if you look, the first one</p> <p>6 says "Current voter registration data,</p> <p>7 including voter history for all active,</p> <p>8 inactive, suspended, and canceled status</p> <p>9 voters," right, "(including any registration</p> <p>10 status other than active)," that's the first</p> <p>11 one?</p> <p>12 A. Uh-huh.</p> <p>13 Q. The second one says "A complete list, by</p> <p>14 county/precinct of any registered voters who</p> <p>15 cast a ballot in the November 3, 2020 general</p> <p>16 election, who have subsequently been placed in</p> <p>17 inactive, canceled, deleted, or removed status,</p> <p>18 or any voter that has been removed or deleted</p> <p>19 from the rolls."</p> <p>20 So those are not asking for the same</p> <p>21 data, are they?</p> <p>22 A. No.</p> <p>23 Q. All right. Fair enough. Okay. Let's come</p> <p>24 back now to my letter. In my second paragraph</p> <p>25 I say, "VRF intends to analyze the records,</p>
<p style="text-align: right;">Page 171</p> <p>1 election related purposes, but will only</p> <p>2 publish the personal information of voters</p> <p>3 online if VRF is granted relief in..." and then</p> <p>4 it cites this case, right?</p> <p>5 A. Uh-huh.</p> <p>6 Q. "...or any other legal proceeding."</p> <p>7 Okay. So did the secretary of state's</p> <p>8 office decide that it believed that statement</p> <p>9 was truthful?</p> <p>10 A. No.</p> <p>11 Q. Did not doubt what I put in my letter?</p> <p>12 A. I don't think there was any discussion of</p> <p>13 doubt.</p> <p>14 Q. Okay. Okay. And then we go to the fourth</p> <p>15 paragraph, I talk now about the second project.</p> <p>16 And it says, "For its second" -- and by the</p> <p>17 way, data for the first project is in a</p> <p>18 separate safety affidavit, isn't it? You see</p> <p>19 there's two affidavits?</p> <p>20 A. There are two affidavits. I am not clear what</p> <p>21 is specific to each project.</p> <p>22 Q. Okay. Okay. Well, that's all right. That's</p> <p>23 all right. You see that each --</p> <p>24 A. They each ask for the same data.</p> <p>25 Q. Do you see the first one under "Other" has one</p>	<p style="text-align: right;">Page 173</p> <p>1 information, and data provided in response to</p> <p>2 the above requests in order to engage in a</p> <p>3 discrepancy review of the New Mexico voter</p> <p>4 rolls. VRF intends to publish this analysis</p> <p>5 online without disclosing the personal</p> <p>6 information of any individual voter."</p> <p>7 Do you see that correct -- did I read</p> <p>8 that correctly?</p> <p>9 A. I do.</p> <p>10 Q. Okay. And then I go on, just so it's clear,</p> <p>11 "VRF will comply with this</p> <p>12 non-public-disclosure promise for the data it</p> <p>13 uses on its second project regardless of</p> <p>14 whether it prevails in the federal litigation."</p> <p>15 Did I read that right?</p> <p>16 A. You did.</p> <p>17 Q. And again, for the sake of clarity, no</p> <p>18 personal information of any individual voter</p> <p>19 will be published online unless VRF is granted</p> <p>20 relief in the federal litigation or in any</p> <p>21 other legal proceeding."</p> <p>22 Did I say that right?</p> <p>23 A. You read it correctly, yes.</p> <p>24 Q. And the secretary's position is that you didn't</p> <p>25 know what I meant by personal information,</p>

<p style="text-align: right;">Page 174</p> <p>1 right? 2 A. Uh-huh. 3 Q. And that what I have might have actually been 4 saying is that we are going to publish personal 5 information because I might have a really 6 narrow definition of what it means, right? 7 A. Uh-huh. 8 Q. Now, did anybody from the secretary's office 9 say -- it was an unclear phrase, right, that's 10 your position? 11 A. I think we established that during this testimony as well. 12 Q. Right. And did anyone ever reach out to ask 13 Voter Reference Foundation, hey, we see this 14 phrase "personal information," you're 15 referencing the lawsuit, where we're actually 16 litigating this question, could you tell us 17 what you mean? 18 No one did that, did they, for VRF? 19 A. I don't believe anyone from our office did. 20 Q. No. And then, in court, VRF then stated that 21 we're not going to disclose name or address, 22 anything from which you could tell the identity 23 of any voter. We're just going to give the 24 analysis of what the discrepancy was. And at</p>	<p style="text-align: right;">Page 176</p> <p>1 A. And when you say we knew, can you point me to where we would know that? 2 Q. Sure. You know, let's do it this way: Today, 3 does the secretary of state's office believe 4 that if we got -- if you fulfil this status 5 request tomorrow, maybe somebody saw this and 6 thought it was -- you know, they just answered 7 it. Do you believe that -- do you believe that 8 VRF would take the data and post the names, 9 addresses, year of birth, voter registration 10 information of voters online? Does the 11 secretary of state's office actually believe 12 that today? 13 A. I don't think that's the question. I think -- 14 Q. I'm asking you that right now. 15 A. I think it's broader than that, that's my 16 point. There's active litigation, and we have 17 to -- we have to deal with the reality. Our 18 office is currently engaged in important 19 litigation on this matter. We've received 20 guidance from our counsel, period. 21 Q. Well -- 22 A. And same answer to your question about the 23 affidavit. This request is a request for the 24 same data, the same question that you asked me</p>
<p style="text-align: right;">Page 175</p> <p>1 that point did the secretary of state's office 2 go back and say now we understand? We're no 3 longer concerned about posting personal 4 information online? Did that ever happen? 5 A. We have not revisited this, no. I think, 6 again, the decision we've been discussing for 7 the past hour or so was based on guidance from 8 our counsel, based on pending litigation, and 9 the requests received, you know, in response to 10 this litigation. 11 Q. So the reason why the secretary didn't go back 12 and produce the data, after getting the 13 explanation of personal information, was 14 because of the litigation, is that right? 15 A. No, based on our outreach to our counsel, 16 because there is pending litigation. So we are 17 going to follow the guidance of our counsel. 18 Q. Okay, I understand. And, unfortunately, I now 19 need to know the reason why you didn't do it. 20 I know you asked counsel. I need to now 21 understand why -- clarification. Because, 22 after that, you knew we weren't going to be 23 posting any personal information online, why 24 that wasn't good enough. What was still 25 missing at that point?</p>	<p style="text-align: right;">Page 177</p> <p>1 about the affidavit and that process and our position would not change. Based on this 2 letter, it was an NVRA request for the 3 affidavit that was submitted. 4 Q. I'm going to ask you a very different question. 5 Okay. My question is: Today, does the 6 secretary of state believe that if it produced 7 to us the data requested here, now that you've 8 heard what I've said -- actually, let me do 9 this. Let's back up. 10 I'm going to tell you -- this is not a 11 hypothetical, okay? I'm going to tell you that 12 if the secretary of state produces data in 13 response to this request, any other request 14 that comes in, using your affidavits, that 15 Voter Reference Foundation is not going to 16 publish any of the personal information of any 17 voter. I'm going to go a step further, just in 18 case you think I'm saying the opposite. It's 19 not going to post the voter's name, their 20 address, their voting history, their last four 21 of their Social Security number, their year of 22 birth. Can you name for me any other personal 23 information in the data set that people get? 24 Anything else that identifies an individual</p>

<p>1 voter?</p> <p>2 A. Which question am I answering?</p> <p>3 Q. Well, I'm going to say -- I'm going to tell you 4 we're not going to post any of that data 5 online. I'm telling you that right now. 6 Knowing that, does the secretary of state have 7 any reason to believe that if you produced this 8 data tomorrow, that Voter Reference Foundation 9 will go and post the data online anyway?</p> <p>10 MS. LECOCQ: Objection.</p> <p>11 A. I think what I can respond to is that that is 12 the same kind of position that you had, right, 13 the same question you asked me about the 14 affidavit, and based on our analysis and 15 guidance from our attorney, our position has 16 not changed. So, again, it would require, you 17 know, guidance from our attorneys based on this 18 pending litigation if we received a new request 19 from you.</p> <p>20 BY MR. GREIM:</p> <p>21 Q. Okay. Now I'm going to ask you: Does the 22 secretary of state believe that if you make a 23 response tomorrow to us, that we are going to 24 take the information of the voters, the 25 individual information for each voter, and put</p>	<p>Page 178</p> <p>1 BY MR. GREIM: 2 Q. I'm asking for office's position. 3 A. You know, I think that I don't have anything to 4 point to. I think it's all a matter of getting 5 to the end of this litigation so that we all 6 have clarity. 7 Q. So the litigation will need to end before you 8 can answer that question? 9 A. I don't know. Again, you know, nothing has 10 changed up to this point. 11 Q. Okay. 12 A. So until something were to change and we got 13 different guidance, I don't have a different 14 answer. 15 Q. So it's kind of what the lawyers say? 16 A. Yes. 17 (WHEREUPON, Deposition Exhibit 9 was 18 marked for identification.) 19 BY MR. GREIM: 20 Q. Well, let's go to our next exhibit. I'm 21 handing you what we're marking as Exhibit 9. 22 You'll see this is a Dylan Lange letter. It's 23 actually an e-mail attaching a letter to Voter 24 Reference Foundation and it copies you. Do you 25 recognize this document?</p>
<p>Page 179</p> <p>1 it online? 2 A. I don't know. 3 Q. So you think it's possible they'll do it 4 anyway? 5 A. I think that it's an analysis that was taken 6 based on your position. I don't think your 7 position has changed. And we have received 8 guidance that it is in our best interest to 9 protect our position and so, therefore, we 10 didn't provide it. 11 Q. I'm not asking -- 12 A. I don't think anything has changed, therefore 13 nothing would change in our response. 14 Q. Okay. So even me telling you every category 15 that will not be put online, the position 16 remains that the secretary of state believes 17 that VRF may put it online anyway? You don't 18 know? You don't know? You think we might, 19 right? 20 A. I think there's a concern. 21 Q. Okay. Is there anything Voter Reference 22 Foundation can do to get rid of that concern? 23 Is there anything at all it can do? 24 MS. LECOCQ: Objection. 25 A. Are you asking for my personal -</p>	<p>Page 181</p> <p>1 A. Give me just a second. I recognize the 2 document. 3 Q. Okay. Did you -- who was involved in drafting 4 this document? 5 A. I know that I spoke to Dylan about it. Dylan 6 drafted the document, and I know that we 7 discussed it with Sharon. 8 Q. So is it fair to say that Sharon and you both 9 approved this document before it went out the 10 door? 11 A. Yes, and also, at the time, Olga. 12 Q. And Olga, okay. You understood that she was 13 advising on behalf of the attorney general's 14 office, correct? 15 A. Right. 16 Q. Okay. So it looks to me like on October 18, 17 2022, Gina Swoboda, VRF, made a request for 18 about five categories of items. And then this 19 response was made on November 17th, about a 20 month later, right? 21 A. Right. 22 Q. Okay. And Ms. Swoboda, on behalf of VRF, made 23 this request under both the NVRA and the New 24 Mexico Public Records Law, right? 25 A. Correct.</p>

<p style="text-align: right;">Page 182</p> <p>1 Q. So let's go to Mr. Lange's -- and by the way, 2 you agreed with everything in Mr. Lange's 3 response?</p> <p>4 A. I do.</p> <p>5 Q. Okay. I'm going to ask you now about these 6 items. So Mr. Lange says, "To begin with, 7 request number 3 is a request for future data 8 that does not/did not exist at the time of your 9 request, and we cannot fulfil requests in 10 perpetuity." That means can't ful- -- you 11 can't make a request for the future, way in the 12 future, and just keep expecting to be billed, 13 right?</p> <p>14 A. Uh-huh.</p> <p>15 Q. Okay. Is that what VRF did here?</p> <p>16 A. Yes.</p> <p>17 Q. Well, let's look at the request. So number 3, 18 is "Voter registration data for all voters 19 removed or canceled from any list between 20 September 24, 2022," right, "and December 15, 21 2022." And so part of that time is into the 22 future, right?</p> <p>23 A. Uh-huh.</p> <p>24 Q. But part of it already existed when the request 25 is made, right?</p>	<p style="text-align: right;">Page 184</p> <p>1 A. That is the request.</p> <p>2 Q. You do that for everybody?</p> <p>3 A. We respond to the request, yes.</p> <p>4 Q. You understand -- you don't -- you're not 5 arguing that VRF asked for data in perpetuity, 6 are you?</p> <p>7 A. I just said that I agreed with this statement made by Dylan in this letter. So I do believe it was asking future data.</p> <p>10 Q. Well, I'm not asking future. I'm asking in 11 perpetuity. VRF is not asking for data in 12 perpetuity, is it?</p> <p>13 A. I don't see that.</p> <p>14 Q. Okay. Let's now go to the second paragraph. 15 It says, "Additionally, we will refrain from 16 producing any responsive voter data maintained 17 by our office at this time due to numerous 18 issues further detailed below." It says that, 19 right?</p> <p>20 A. Yes.</p> <p>21 Q. And let's just march through those. He says, 22 "To begin with, this decision is motivated by 23 the fact that you will post any voter data 24 provided on your website, which our office 25 believes is a violation of law."</p>
<p style="text-align: right;">Page 183</p> <p>1 A. But the ask was for a window of time.</p> <p>2 Q. Sure. But is there any reason not to just to 3 give the data that you do have from 4 September 24th to the date of the response?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. Our position and our process across the board is to respond to requests, to respond to the request that was made. And we could not because that window of time didn't exist at that time.</p> <p>11 BY MR. GREIM:</p> <p>12 Q. Okay. So if somebody were to ask you -- let me 13 ask you this: What if the request was 14 through -- from September 24th of 2022 to 15 November 17, 2022, would you say we're going to 16 not respond to that request because on 17 October 18th it wasn't November yet?</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 BY MR. GREIM:</p> <p>20 Q. I mean, I'm just trying to understand the 21 principle here.</p> <p>22 A. The request was for future data that we did not have. So if it was asking for future data, we do not have it.</p> <p>25 Q. You reject the entire request then?</p>	<p style="text-align: right;">Page 185</p> <p>1 Now, on what basis did the secretary of 2 state believe on November 17th that Voter 3 Reference Foundation was just going to post 4 whatever it got on its website?</p> <p>5 A. Because it had occurred.</p> <p>6 Q. Did you consider any statements that Voter 7 Reference Foundation or its counsel -- promises 8 that counsel made in open court afterwards, 9 were those considered?</p> <p>10 A. What is the date? Maybe we can clarify the date. Was this letter before or after that hearing?</p> <p>13 Q. This was in November, and this issue was 14 discussed -- you know, I hate to start making 15 representations without the transcripts here. 16 There were no hearings after November 17th, 17 I'll just tell you that.</p> <p>18 So, I mean, my question is: On 19 November 17th it sounds like the only data 20 point for the secretary of state's office was 21 that at one time VRF had posted data on its 22 website.</p> <p>23 A. And I think I've spoken to that concern.</p> <p>24 Because it had been posted online, that was a concern to us.</p>

<p style="text-align: right;">Page 186</p> <p>1 Q. And any promises VRF made not to post on its 2 website were not relevant, is that right? 3 MS. LECOCQ: Objection. 4 A. Again, the decision was made on past practice. 5 BY MR. GREIM: 6 Q. Okay. I understand that. My question is 7 whether it's relevant when Voter Reference 8 Foundation comes to you directly and says it 9 will not post data online? 10 A. Clearly -- my understanding, just to make sure 11 I have the timeline correct, this request came 12 to us after the hearing in which you made those 13 statements, correct? 14 Q. Yeah, it definitely did. 15 A. Okay. So our position, as outlined in this 16 letter, was that based on past practice and 17 concerns that it was going to be posted, we 18 were not going to provide the data. 19 Q. And I'm just trying to understand what weight, 20 if any, you gave to VRF's direct statements 21 that it would not do so? Did you give that 22 statement any weight? 23 A. I think we consider all things, right, but at 24 the end of the day -- 25 Q. Did you consider it?</p>	<p style="text-align: right;">Page 188</p> <p>1 MS. LECOCQ: Objection. 2 A. When was that? I'm just trying to get that in 3 my mind at this point. 4 BY MR. GREIM: 5 Q. July, the Court told us not to repost it. 6 A. 2022, and you reposted it, correct? And so 7 then it was posted at the time of this request 8 for more data. 9 Q. It was, yes. 10 A. So, yes. So after a promise not to post it, it 11 was reposted, and then we get a request for 12 more data, absolutely. 13 Q. Now, do you recall that the promise not to post 14 it was unless or until we got relief from the 15 Court? Do you recall that? We can go back and 16 look at the letter. Let's go back. 17 A. That's fine. I get that you're going to do 18 what the Court allows you to do. 19 Q. Right. But nonetheless, there was a dock 20 against VRF when deciding whether to -- whether 21 to -- 22 A. I think that's a very clear indication of the 23 intention of the use of the data. 24 Q. Okay. And so, now, how do you factor in the 25 fact that after the Court of Appeals stayed the</p>
<p style="text-align: right;">Page 187</p> <p>1 A. -- we have obligation to protect what we 2 believe is folks' privacy and to maintain their 3 opportunity to participate in the process. So 4 as I stated consistently, you know, at the 5 hearing, again today, in our responses, our 6 concern, based on past practice, was that this 7 data was going to be posted online. 8 Q. So when -- 9 A. And there was a decision not to provide the 10 data. 11 Q. So when will VRF's past practice of posting the 12 data stop counting against it when it makes 13 data requests? 14 MS. LECOCQ: Objection. 15 A. I don't even know how to answer that question. 16 BY MR. GREIM: 17 Q. Okay. Did you consider the fact that VRF 18 posted data after obtaining an injunction from 19 the Court? Did that concern you as well? 20 A. Did I what, I'm sorry? 21 Q. You're saying you were considering past 22 practices. Was one of the past practices that 23 you considered the fact that VRF reposted the 24 data after getting an injunction from the 25 Court?</p>	<p style="text-align: right;">Page 189</p> <p>1 injunction VRF immediately took it down? 2 A. Because it's a court order, not out of respect 3 for the state law or our position or our 4 policy. 5 Q. Because we had to? 6 A. Yes. 7 Q. Okay, got it. But do you believe VRF will 8 maybe even post it without a court order? 9 A. Post what without a court order? 10 Q. Voter data. 11 A. That if the Court says you cannot? 12 Q. Right. 13 A. If the Court says you cannot, no. 14 Q. Do you believe that while the issue is still 15 pending, VRF might just decide to start posting 16 again? 17 A. I think without a court order, I think their 18 intention is to post that data, yes. 19 Q. Oh, so you believe VRF is going to -- you 20 believe VRF will post voter data even without a 21 court order? 22 A. I don't think I said that. 23 Q. Okay. I thought I -- I could have sworn you 24 said that. 25 A. No.</p>

<p style="text-align: center;">Page 190</p> <p>1 Q. So even while this case is pending, do you 2 believe VRF is going to repost data? 3 A. I think without a court order that prohibits 4 the posting of data, VRF has demonstrated that 5 its intention is to post the data. 6 Q. Okay. The next thing is, finally, on 7 November 10, 2022 -- I'm back to Exhibit 9. On 8 November 10, 2022, we filed a motion to stay -- 9 second paragraph. I'm kind of at the bottom of 10 that second one. "We filed a motion to stay 11 the preliminary injunction pending appeal... 12 ...and do not think it is appropriate to 13 produce voter data until the Court has ruled on 14 the motion." 15 Did I read that right? 16 A. You did. 17 Q. Okay. Why not? 18 A. Why do we feel like it's not appropriate? 19 Q. Yes. 20 A. Because we feel like it's against the law. 21 Q. Right. But -- so -- oh, so you -- is it the 22 secretary of state's position that it is 23 actually against the law to produce data to 24 VRF? 25 A. No.</p>	<p style="text-align: center;">Page 192</p> <p>1 up. While we're doing that, let me make sure I 2 understand. The inappropriateness here in this 3 sentence relates to another concern that 4 without a definitive win in the Court of 5 Appeals, VRF might start posting even new data 6 on the Internet, is that right? Let me 7 rephrase that. 8 The inappropriateness you're referring to 9 here is the secretary of state's concern that 10 unless and until the secretary of state got a 11 definitive win in the Tenth Circuit that VRF 12 might just post any data it got online? 13 MS. LECOCQ: Objection. 14 BY MR. GREIM: 15 Q. Is that the concern? 16 A. The concern was that VRF had posted data. We 17 understand that they had an intention to post 18 data, and they're asking for updated data, so, 19 yes, there is a concern that it would be 20 posted. 21 Q. Okay. I'm just going to read to you -- you're 22 not in a good position for me to tilt the 23 computer around. I'm looking at DOC 51, 24 page 210. And it says, "It is ordered that (i) 25 the Plaintiffs' motion for preliminary</p>
<p style="text-align: center;">Page 191</p> <p>1 Q. Okay. So I'm asking you why the secretary of 2 state says that "We do not think it is 3 appropriate to produce voter data until the 4 Court has ruled on the motion"?</p> <p>5 A. We appealed -- we were in the process of 6 appealing because we felt like posting it 7 online was against state law --</p> <p>8 Q. Okay. But --</p> <p>9 A. -- is against state law.</p> <p>10 Q. So what was inappropriate about just producing 11 data to VRF at this time?</p> <p>12 A. The knowledge that it was going to be posted 13 online.</p> <p>14 Q. Okay. Well, let's talk about this. Did the 15 order allow VRF to post all data online or just 16 some data?</p> <p>17 A. I don't know.</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 BY MR. GREIM:</p> <p>20 Q. Okay. Well, we may have to actually pull it 21 out. Did the secretary of state recall that 22 the order only related to the data that VRF had 23 already received?</p> <p>24 A. I'd have to look at the order.</p> <p>25 Q. I think we're going to have to pull the order</p>	<p style="text-align: center;">Page 193</p> <p>1 injunction is granted in part; (ii) that AG 2 Balderas and Defendant SOS Oliver are enjoined 3 from prosecuting Plaintiff VRF for publish- -- 4 okay, this is all one thing -- "are enjoined 5 from prosecuting Plaintiff Voter Reference 6 Foundation under N.M.S.A. 1-4-5.5 or 1-4-5.6 7 for publishing data it already received from 8 Local Labs."</p> <p>9 Okay. So does that refresh your 10 recollection that the order only went to the 11 data we already received?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. I mean, I heard you. Now I know what it says.</p> <p>14 BY MR. GREIM:</p> <p>15 Q. Okay. So is it possible that the secretary of 16 state -- I mean, you're here not as yourself 17 but for the secretary of state, did not know 18 that the injunction only related to the data 19 that VRF had received from Local Labs?</p> <p>20 MS. SCHREMMER: Objection.</p> <p>21 A. It's possible. But I guess also, you know, 22 when I hear that statement all along, right, 23 there's 200 and something other pages to 24 consider in that order, so I am going to, 25 obviously, rely on an attorney to read that in</p>

<p style="text-align: right;">Page 194</p> <p>1 its entirety. So it already received, does 2 that mean the fields? Does that mean only from 3 a certain date and time? I don't think that's 4 clear.</p> <p>5 BY MR. GREIM:</p> <p>6 Q. Okay. So the secretary of state thought that 7 the injunction was unclear?</p> <p>8 MS. SCHREMMER: Objection.</p> <p>9 A. I think that statement you just read that 10 you're asking me respond to is unclear, as I 11 think there is a much larger document that was 12 reviewed and considered by our legal counsel.</p> <p>13 BY MR. GREIM:</p> <p>14 Q. Okay. Well, let me just ask you. I want to 15 make sure I fully understand the meaning of 16 this last phrase about "do not think it's 17 appropriate to produce voter data." Is there 18 any other concern about appropriateness there 19 other than the fear that VRF was going to take 20 the new data and post that online?</p> <p>21 A. It was the belief, based on past practice, that 22 it was going to post the new data online, and 23 also the fact that we were appealing that 24 decision that provided opportunity to post.</p> <p>25 Q. So why would the appeal make a difference? I'm</p>	<p style="text-align: right;">Page 194</p> <p>1 Q. Okay. And so, I mean, the Tenth Circuit 2 decision isn't decided now either, right? 3 Still waiting?</p> <p>4 A. We are still waiting.</p> <p>5 Q. Okay. Well, actually, let's be clear. What 6 you cite here is the motion to stay the 7 preliminary injunction --</p> <p>8 A. Correct.</p> <p>9 Q. -- right? Well, that was granted.</p> <p>10 A. Yes.</p> <p>11 Q. So does that change this sentence? Would you 12 now produce the data because the motion to stay 13 was granted, or would you be less inclined to 14 produce the data because the motion to stay was 15 granted?</p> <p>16 A. I think as I stated before, you know, there 17 hasn't been a significant change in the facts, 18 right, so there's not a change in your 19 position, not a change in our position, no.</p> <p>20 Q. Well -- okay. But the letter cites the motion 21 to stay, as a fact that it's pending, as a 22 reason not to produce the data, and so the 23 motion to stay has been decided, it has been 24 granted. And so now that something -- that has 25 changed, the thing cited here has changed. And</p>
<p style="text-align: right;">Page 195</p> <p>1 trying to understand why would the fact of the 2 appeal keep VRF from being able to get data?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 BY MR. GREIM:</p> <p>5 Q. Why did the secretary of state think that the 6 appeal mattered?</p> <p>7 A. It mattered because we believed that posting it 8 online is contrary to what the law allows.</p> <p>9 Q. But was the secretary of state going to get a 10 decision from the Tenth Circuit that VRF can 11 never post the data online? Was that even a 12 possibility on the appeal?</p> <p>13 A. We believe that is a possibility.</p> <p>14 Q. Okay.</p> <p>15 A. We believe that we are following the law.</p> <p>16 Q. Okay.</p> <p>17 A. That's it.</p> <p>18 Q. Okay. So the secretary of state -- I'm just --</p> <p>19 believes that it might win in the Tenth</p> <p>20 Circuit, and the Tenth Circuit might say, "VRF,</p> <p>21 you can't post this online at all," and you</p> <p>22 thought you needed to wait to see what the</p> <p>23 Tenth Circuit said, is that right?</p> <p>24 A. In part, and the past practice of reposting 25 online, yes.</p>	<p style="text-align: right;">Page 197</p> <p>1 so my question is which way does that cut? 2 Does it make it -- is the secretary of state 3 more inclined to release the data after having 4 won the motion to stay or less inclined 5 to release the data?</p> <p>6 A. I don't have an updated response from the 7 office on that item.</p> <p>8 Q. Okay. I'm going to be adding that to the list 9 of things that we don't have an answer to and 10 this may require counsel being involved. I'd 11 like to understand that. We need to understand 12 what this letter means.</p> <p>13 Okay. The next -- we can keep moving 14 through. The next paragraph says that you have 15 not submitted the required affidavit and it 16 cites -- oh, here, it actually cites the 17 injunction, so it cites part of the injunction. 18 So is the lack of an affidavit one of the 19 reasons for rejecting the request?</p> <p>20 A. Absolutely.</p> <p>21 Q. Even had there been an affidavit attached, it 22 still would have been rejected, though, 23 correct?</p> <p>24 A. I think we don't know that answer because we 25 didn't receive one, right?</p>

<p style="text-align: right;">Page 198</p> <p>1 Q. No -- well -- 2 A. But based on what we do know at this -- are we 3 asking about this point in time? 4 Q. Yes. 5 A. Yes. 6 Q. Okay. It would have been rejected even with 7 the affidavit? 8 A. Yes. 9 Q. Okay. And then finally at the very end you say 10 that if the Court orders you to produce it, you 11 will, right? 12 A. Right. 13 Q. That remains true? 14 A. Correct. 15 (WHEREUPON, at this time a discussion was 16 held off the record.) 17 BY MR. GREIM: 18 Q. I have one more question about Exhibit 9 -- a 19 different part -- I'm sorry, this is Exhibit 8. 20 Let's go back here. Exhibit 8 does double 21 duty. It is a request for -- it attaches a 22 request for records and it also provides a 23 notice of violation. Do you see the bolded 24 section in the beginning? There's some 25 indentation problems there, but it says "Notice</p>	<p style="text-align: right;">Page 200</p> <p>1 So your counsel may have an objection 2 that I can't ask this question or that you 3 don't need to give me an answer, but I'm just 4 going to ask it on the record. Does the 5 secretary of state contend that there is 6 anything defective in this notice of violation 7 of the NVRA? 8 MS. LECOCQ: Objection. You can answer. 9 A. I don't know. 10 MR. GREIM: Now we can take our break. 11 (WHEREUPON, at this time a brief recess 12 was taken.) 13 BY MR. GREIM: 14 Q. All right. Before we leave our last topic, the 15 denials of records, we talked, Ms. Vigil, about 16 the reasons for the secretary of state denying 17 the requests that I made in May and then we 18 talked again about the denials of the November 19 requests. I just want to make sure we're not 20 missing any of the reasons for the denials of 21 the requests. 22 A. I mean, it was made in October, right? 23 Q. Yeah, made in October, that's right. And so 24 maybe if we can go back to Exhibit 8, we talked 25 about the statements regarding personal</p>
<p style="text-align: right;">Page 199</p> <p>1 of Violation of National Voter Registration Act 2 and Request for Records," do you see that? 3 A. I do. 4 Q. Okay. Now, one thing we're asking for the 5 secretary of state's position on in this case 6 is whether there was any information missing 7 from this notice. Is there anything in here 8 that it is claiming should have been inserted 9 into this notice to make it a proper notice? 10 And my question is: Is there anything missing 11 in the notice? 12 A. A proper notice of NVRA violation? 13 Q. Uh-huh. 14 A. I don't know what's required of the notice of 15 an NVRA violation. 16 Q. Did you do anything before the deposition today 17 to explore that topic? 18 A. Compliance with federal law from your 19 organization? 20 Q. No, no. Let's -- I mean, I can -- we can go 21 back to the -- we can go back to the notice. 22 Let's see here. Oh, it's the admissions and 23 denials and responses to discovery. Okay. 24 Well, we asked you a question about whether 25 this notice was proper.</p>	<p style="text-align: right;">Page 201</p> <p>1 information, not publishing it online, and -- 2 but I skipped over, kind of, the second of the 3 two projects. And so I list in this request 4 two different projects that we were going to do 5 with the data. And you'll see the first one is 6 this complete list by county precinct -- I'm 7 sorry. These are two sets of data. And the 8 second one is the current voter registration 9 data. 10 And then I go in and mention the two 11 projects. At the very bottom I say for a 12 second project VRF intends to analyze basically 13 the data or to engage in a discrepancy review 14 of the voter rolls. Do you remember reading 15 over that earlier? 16 A. Yes. 17 Q. And I just wanted to know, earlier I think you 18 testified that some of the misinformation that 19 the secretary thinks that VRF was engaging in 20 was that discrepancy analysis and its 21 statements about that, which would have been 22 back in late 2021. And so before I ask a 23 question, I just want to make sure that you're 24 tracking with me. Do you recall testifying 25 earlier about the secretary's concern that the</p>

Hugh Alexander Curtas February 28, 2023 Plaintiff's Designations	
Beginning	Ending
4:18	4:22
52:7	53:9
53:6	53:9
72:17	72:22
72:23	73:12

Hugh Alexander Curtas February 28, 2023 Defendants' Designations	
Beginning	Ending
53:10	54:10
55:1	55:10
71:24	72:16
74:08	75:10
83:4	85:11
89:23	90:11
94:24	95:11
113:4	113:18
116:8	117:11



PohlmanUSA®
Court Reporting and
Litigation Services

Hugh Alexander Curtas

February 28, 2023

Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

1 THE REPORTER: All parties to this deposition
2 are appearing remotely and have agreed to the
3 witness being sworn in remotely.

4 Due to the nature of remote reporting,
5 please pause briefly before speaking to ensure all
6 parties are heard completely.

7 Counsel will be noted on the
8 stenographic record.

9 Mr. Curtas, would you raise your right
10 hand, please, sir.

11 (WHEREUPON, the witness was duly
12 sworn.)

13 HUGH ALEXANDER CURTAS,
14 called as a witness herein, having been first duly
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. TYLER:

18 Q. Mr. Curtas, thanks for coming. Can you
19 just again give your full name.

20 A. Sure. Full name, Hugh Alexander Curtas.

21 I'm the communications director for the Secretary
22 of State's office.

23 Q. So, it is Curtas, not Curtas
24 (pronunciation)?

25 A. Yes.

1 Q. Okay. So, you say, "Simply put,
2 VoteRef.com is misleading the public about New
3 Mexico's voter rolls and are perpetuating
4 misinformation."

5 I have got a couple terms just in that
6 sentence that I would like to define quickly.

7 When you say "misinformation," what do
8 you mean?

9 A. I mean misinformation about voting and
10 elections that was very prominent at the time and
11 continues to be very prominent.

12 Q. So, misinformation, though, what do
13 you -- what is misinformation to you?

14 A. So, misinformation in -- are you talking
15 in general or specific what I'm specifically
16 referring to here?

17 Q. If there is a general definition that
18 you have and then a different specific definition
19 in this context, then I would like to know both of
20 those. But if there is just one, I'd like to know
21 that one.

22 A. I think in this context, they are the
23 same. And what I mean by misinformation and
24 election and voting misinformation at this -- here,
25 is putting out information about our voting and

1 **elections that doesn't correspond to the truth.**

2 Q. And in this context, you're saying that
3 VRF is perpetuating misinformation. What is the
4 information that VRF was putting forth that did not
5 correspond to the truth?

6 A. **Sure. So, the misinformation that**

7 **Voter Ref is -- you know, that I'm claiming here,**
8 **is that there are discrepancies within our voter**
9 **data.**

10 Q. And how did you come to that conclusion?

11 A. **That conclusion is basically the first**
12 **bullet point of my answer in this e-mail, namely,**
13 **that this organization is claiming that our voter**
14 **data is not accurate and they are mis- -- I mean,**
15 **they are, they being Voter Ref, are**
16 **mischaracterizing the data they seem to be in**
17 **possession of.**

18 Q. What is the characterization by
19 Voter Ref that you are saying is misinformation?

20 A. **That there are differences between the**
21 **voter -- like the voter data and number of ballots**
22 **cast or, you know, what they are alleging in here,**
23 **in there or what I have been told from this**
24 **reporter at this point is incorrect.**

25 **A discrepancy -- well, what I came to**

1 learn was that the data they are referencing here,
2 Voter Ref, via Megan O'Matz and into my e-mail, is
3 from a voter file that was pulled months before
4 this. And what I learned is that then immediately
5 once anyone pulls a voter file, it's out of date
6 immediately because the voter data is being
7 constantly updated.

8 And, so, to claim a discrepancy in our
9 voter data when there is not one, to me, is
10 misinformation.

11 Q. And was that the -- let me rephrase.

12 You said to you that's misinformation.

13 Did you talk to anybody else in the office about it
14 being misinformation?

15 A. That I couldn't recall. I couldn't
16 recall that. What I talked to other people in the
17 office was about the facts that I needed to respond
18 to this reporter.

19 Q. Okay. Let's move to the next sentence
20 in that first paragraph.

21 "They reflect a lack of understanding
22 about how the process of voter list maintenance
23 works."

24 Did I read that correctly?

25 A. Yes.

1 Q. Okay. You kind of touched on this I
2 think. But what is the lack of understanding that
3 you were referring to?

4 A. Yeah, the lack of understanding I'm
5 referring to there is the -- the fact that if you
6 reference -- if you pull a voter data file and then
7 you want to compare that voter data file with
8 current voter data, that -- and claim a
9 discrepancy, you're misunderstanding the data. And
10 that's what I'm referencing there.

11 Q. What would you suggest to someone,
12 either an organization like VRF or just a
13 New Mexico citizen, if they had a similar lack of
14 understanding?

15 MS. LECOCQ: Objection.

16 BY MR. TYLER:

17 Q. What would you suggest to them to do?

18 A. I would suggest that they learn just how
19 the process works, you know, just learn the
20 back-end process of how data is maintained and used
21 and what it means to pull the voter file and why as
22 soon as you pull it it's out of date.

23 Just that kind of thing right there,
24 most people wouldn't understand. "What do you mean
25 it's out of date? Why?" You kind of have to

1 **A. These are my words drafted from what**
2 **they told me.**

3 Q. Okay. In the course of either, you
4 know, when you got the first e-mail from Megan
5 O'Matz or at any point after that, have you created
6 any like file on VRF or anything like that that you
7 would have, research documents and/or drafts of
8 things?

9 MS. LECOCQ: Objection.

10 BY THE WITNESS:

11 **A. No, no. Other than, you know, the**
12 **e-mails that -- these e-mails and things that I**
13 **have produced for discovery, yeah, that's -- that's**
14 **the only information I would have referencing VRF.**

15 BY MR. TYLER:

16 Q. Okay. And moving on to the second
17 bullet point, you say, "No, our Office has not been
18 contacted by this group to discuss their findings
19 likely because that would not serve their intended
20 goal of spreading misinformation."

21 I think we've hit that first clause a
22 good amount.

23 **A. Um-hmm.**

24 **Q. The second one, where did you come to**
25 **this conclusion or how did you come to this**

1 conclusion that the intended goal of VRF is to
2 spread misinformation?

3 A. So, I would have -- I came to that
4 conclusion because of the information that I had at
5 that point and -- which cannot also -- which must
6 be seen in the larger context of what's going on in
7 December of 2021 and to now, which is an immense
8 amount of mis- and disinformation about voting and
9 elections being, you know, in the public
10 conversation.

11 So, that's to say me specifically,
12 because I'm kind of the front line on this, but our
13 office more generally, very -- we are very attuned
14 to the misinformation that's out there about
15 elections in general and New Mexico's elections
16 specifically.

17 And, so, I as the spokesperson for the
18 office am pushing back hard wherever I find it,
19 wherever I see it, and because we want New Mexicans
20 to have accurate information about their voting and
21 elections. It's part of our mission at the office.

22 And, so, I'm very attuned to that.

23 Once I kind of looked at all of this,
24 namely, that this group is in illegal possession of
25 our voter data and not only are they in illegal

1 possession of our voter data, they are making
2 claims, false claims, about the data that they
3 have, and those two things are really concerning to
4 me and led me to the conclusion -- especially
5 because there is a larger kind of strategy of
6 election denialism that focuses on voter list
7 maintenance specifically.

8 So, it's not like this is happening in a
9 vacuum. There is a reason that when I'm looking at
10 all of this information that I have at this point,
11 I am, you know -- I'm of the opinion that this
12 is -- that this is their intention.

13 Q. Are there other people in the
14 Secretary's office that share your feelings about
15 this?

16 A. I wouldn't be able to talk about -- I
17 mean, specifically to whatever individuals are
18 thinking about this and, you know, about this group
19 and in this time. So, I mean, you know, this is --
20 yeah, I mean, I don't know exactly what someone
21 like Sharon or Mandy or whatever, you know, would
22 think about this group at this time.

23 Q. Have you ever talked to anyone in the
24 office about the kind of -- what you're referencing
25 as the greater kind of misinformation around

1 elections?

2 A. Certainly, yes. We talk about that all
3 the time. It's been a major, you know, a major
4 project of our office to push back against election
5 misinformation since 2020. Actually, before 2020.
6 But a major project of the office. So, definitely
7 something that is discussed.

8 Q. Is it fair to say -- so, you said that
9 you were pushing back hard. Is it fair to say you
10 were pushing back hard because you were associating
11 VRF with these other organizations or other people
12 who were in your mind associated with election
13 denial or anything like that?

14 MS. LECOCQ: Objection.

15 BY MR. TYLER:

16 Q. Misinformation.

17 A. Really, the reason I'm pushing back hard
18 in this instance is really at this point I have not
19 that much information about the Voter Reference
20 Foundation. The information I have is basically
21 coming from this reporter.

22 I mean, a little bit of that Google
23 search, but really it's coming from this reporter
24 and what I can glean from them being in possession
25 of voter data and then making claims that we

1 consider to be false about that voter data.

2 So, I mean, that's what's informing my

3 claim there that they're attempting to spread this

4 misinformation. I mean, and the larger context in

5 which this is playing out.

6 But I don't -- at this point I don't

7 know enough specifics about these people or

8 anything to say -- to say anything other than on

9 its face it looks like they're spreading

10 misinformation about our voter data.

11 Q. Could you just discuss the views that

12 you have personal knowledge of of the other people

13 in the Secretary's office about misinformation

14 regarding elections or voter rolls or voter

15 maintenance?

16 MS. LECOCQ: Objection.

17 BY THE WITNESS:

18 A. Well, I mean, again, going back, you

19 know, without being able to know exactly what, you

20 know, any one person's thinking, I think that we

21 are aligned, the leadership team in our office is

22 aligned in wanting to get New Mexicans the best

23 information they can and pushing back against what

24 we see as a real problem with the narrative around

25 elections, which is misinformation.

1 So, what you describe there is what my,
2 you know -- is the -- what I was operated -- the
3 knowledge that I was operating off of.

4 Q. I guess I'm just trying to pinpoint what
5 you're believing and what the office is believing
6 is the misinformation.

7 A. Sure. Well, the misinformation.
8 They're claiming almost 4,000 people voted in
9 New Mexico that didn't vote. That's a -- that's a
10 big bit of misinformation right there because
11 that's just not true.

12 They have no proof of that. There had
13 never been any proof of that. What they are
14 referencing in terms of this data does not prove
15 that.

16 And, yeah, so that's kind of what I'm --
17 that's what I'm getting at there is that, you know,
18 they are looking at this, at this data, and they're
19 saying something that's not true about it. And in
20 my mind that undermines voter confidence. I
21 understand, you know, their claim is that they are
22 trying to -- voter confidence as well.

23 But in my, you know, work and all of
24 this, these kinds of things, especially coming --
25 this is, again, in the context of 2020 and we're --

1 we've already gotten through the 2020 election,
2 January 6, all of that. We are coming up on to
3 this very important midterm election. We want to
4 make sure that people have the correct data.

5 And what I don't want out there as a
6 communications person is a false story that our --
7 that 4,000 more people, that there is some kind of
8 discrepancy between, you know, who is on the rolls
9 and who is going to be able to vote. And, so,
10 that's why I am really trying to be -- like push
11 back hard on this.

12 Q. Okay. And I promised you that I was
13 going to pick up the pace a little bit, and I
14 promise that I will, but I have one last question
15 for you.

16 You've said that if someone had a
17 question or an inquiry like VRF, they should
18 contact you.

19 After you learned that VRF did contact
20 the Secretary of State, did you ever contact VRF?

21 MS. LECOCQ: Objection.

22 BY THE WITNESS:

23 A. I did not contact VRF, but I can't say
24 with any certainty whether other -- somebody in my
25 office may have done that.

1 BY MR. TYLER:

2 Q. Did anybody come and talk to you about
3 contacting VRF?

4 A. Not that I recall. Not that I recall.

5 Q. Did anybody talk about not contacting
6 VRF?

7 MS. LECOCQ: Objection.

8 BY THE WITNESS:

9 A. Yeah, not that I recall.

10 BY MR. TYLER:

11 Q. Okay. I would like to go to page 4, 4
12 and 5. And, again, the -- a little wonky here.
13 The bottom of page 4 is the first part of the
14 e-mail from the top of page 5.

15 A. Okay.

16 Q. And here -- will you just take a second
17 and read that e-mail to yourself.

18 A. Sure.

19 Q. Sorry. Just to clarify right now. I'm
20 just talking about the December 16 e-mail at 11:44.

21 A. Okay. Gotcha. So, just this one right
22 here.

23 Q. Yes.

24 A. Yes, I have read that.

25 Q. In that e-mail she is talking to you

1 **A. Thank you for numbering these.**

2 Q. So, this is after some just
3 back-and-forth. She thanks you for looking into
4 the issue.

5 **A. We're going up in time here.**

6 Q. Yes, yes. It's kind of reverse
7 chronological order here.

8 **A. I got you.**

9 Q. And you say, "On the legal issue: Our
10 office believes publication of voter data by
11 VoteRef.com is in direct violation of New Mexico
12 Election Code. We do not believe that posting New
13 Mexicans' private voting information online is
14 legal use of this information. We will refer the
15 use of this information by VoteRef.com to the
16 New Mexico Attorney General for criminal
17 investigation and prosecution."

18 And where did you get this information?

19 MS. LECOCQ: Objection.

20 BY MR. TYLER:

21 Q. We can go -- let's just go piece by
22 piece here, make it a little bit more clear.

23 You say, "Our office believes this
24 publication of voter data by VoteRef.com is in
25 direct violation of New Mexico Election Code."

1 Where did that conclusion come from?

2 A. So -- well, I mean, it comes from the
3 experts in our office. So, in this specific thing,
4 you know, as -- to compare to that e-mail where I'm
5 doing some editorializing on my own, when it comes
6 to legal issues, I get verbatim words from Dylan
7 and this was a copy-paste. This is how I respond
8 to the reporter in this claim.

9 And I -- you know, because -- I mean,
10 Dylan is our general counsel, so, this -- he gave
11 us this.

12 MS. LECOCQ: I'm going to just register an
13 objection. I don't want to waive any
14 attorney-client privilege. I understand what it is
15 that you're trying to do here, so I don't want to
16 get in the way of that. But I just want to put on
17 the record we are not waiving the attorney-client
18 privilege.

19 MR. TYLER: Sure. And I will just ask what's
20 in this e-mail.

21 BY MR. TYLER:

22 Q. So, you said that this was verbatim and
23 you shared this with Megan O'Matz. Was that from
24 an e-mail? Did you copy-and-paste it in?

25 A. It was -- again, I couldn't say

1 **A.** No, it's not that formal.

2 BY MR. TYLER:

3 **Q.** Okay.

4 **A.** Yeah.

5 **Q.** Okay. And, so, I think you've answered
6 this a little bit, but the bit that's in quotes
7 here from "We do not believe" through the end of
8 that paragraph, what is that quoted from?

9 **A.** If my recollection is correct, that is a
10 direct copy-paste from the AG referral letter that
11 we're referencing here.

12 **Q.** And what do you mean when you say "This
13 is the crux"? What do you mean?

14 **A.** I just mean, you know -- she's asking me
15 that specific question, Megan O'Matz is asking me
16 that specific question.

17 In that last e-mail, you know, I gave
18 her the entire AG referral letter, so she has the
19 entire thing for context. But just as kind of a
20 quick summary, this is, you know, just so you know,
21 this is the main point, the thesis statement of
22 this, you know, of the referral letter that I've
23 attached.

24 **Q.** Who told you that that was the crux or
25 that that was the summary part?

1 MS. LECOCQ: Objection.

2 BY THE WITNESS:

3 A. No one specifically. That would have
4 been my -- my, you know, conclusion after reading
5 that. The referral letter, that was the most
6 important. Like I said, that's the thesis
7 statement of the letter. So, that's why I wanted
8 her to have that in that e-mail.

9 If she didn't look at -- you know, if
10 she never wanted to look at that letter, she could
11 still get the idea from that sentence.

12 BY MR. TYLER:

13 Q. Now that this has kind of turned into,
14 through these e-mails, this has kind of turned into
15 a legal issue and maybe a bigger issue than you
16 maybe thought it was in the first place -- I don't
17 know -- are you running these e-mails by anybody at
18 this point?

19 MS. LECOCQ: Objection.

20 BY THE WITNESS:

21 A. No, no. No, I have the leeway, you
22 know, and authority in the office to correspond
23 with a reporter in this way.

24 BY MR. TYLER:

25 Q. Okay. Did anybody in the office ever

1 **A. The most prevalent --**

2 **Q. Most prevalent. Okay.**

3 **A. -- I would say, yes.**

4 **Q. So, why is VRF on this page?**

5 **A. Sure. So, VRF is on this specific**
6 **page because more -- speaking more to that timely**
7 **aspect is that after these articles came out, we**
8 **were concerned -- we wanted people to know exactly**
9 **what was happening with -- with the publication of**
10 **the voter data. So, that's why Voter Reference is**
11 **mentioned on here.**

12 **Q. So, you just wanted people to know about**
13 **Voter Reference?**

14 **A. No. We wanted to -- we wanted people to**
15 **know about what was going on with the data -- with**
16 **the New Mexicans voter data and -- and because it**
17 **has to do with Voter Reference Foundation, we had**
18 **to reference them and talk about that as well.**

19 **Q. Okay. And if we go down to where it**
20 **talks specifically about Voter Reference**
21 **Foundation, I believe it says -- I believe it's the**
22 **first one.**

23 **MS. LECOCQ: I'm so sorry, Counsel, where are**
24 **you?**

25 **MS. SCHREMMER: What page are you on?**

1 **A. And I am in charge of developing this**
2 **page.**

3 Q. So, if we can go down to what I believe
4 is still on page 1, talking about Voter Reference
5 Foundation, "What you need to know." You wrote all
6 of this, correct?

7 **A. I did.**

8 Q. Okay. And what is your goal in putting
9 this on this specific web page?

10 A. So, the goal when putting this content
11 on this web page is -- and, again, we're talking
12 just about the Voter Reference portion of this
13 page?

14 Q. Yes.

15 A. Is to make sure that the public has a
16 resource for more information now that there have
17 been published news articles about these topics.

18 We wanted to make sure that people
19 understood, you know, basically the questions that
20 I have in here, how much of my information is
21 online, can I cancel my voter registration and get
22 my information taken off.

23 And probably what was the most important
24 or one of the most important things we were
25 thinking about at this point is our confidential

1 address program, which is a very important program
2 for our office, shields survivors of domestic abuse
3 and stalking from having their information out
4 there.

5 Of course, publishing voter information,
6 you know, could have potential implications for
7 those people. So, we wanted to make sure -- that's
8 why, you know, a third of this post, of that
9 section of the post is taken up by the Safe at Home
10 program and really just wanted people to know, hey,
11 this is happening.

12 Q. Okay. And, so, you mentioned it there
13 at the end, but just to clarify the program that
14 you were referring to is the Safe at Home program?

15 A. Yes. Yes.

16 Q. There are various things that are in
17 blue here and --

18 A. You mean the URLs?

19 Q. Yes.

20 A. Yes.

21 Q. I do. From being the person that wrote
22 this portion, these are links?

23 A. They are links, yes, sir.

24 Q. Do you know where these links go?

25 MS. LECOCQ: Objection.

1 I, CORINNE T. MARUT, C.S.R. No. 84-1968,
2 Registered Professional Reporter and Certified
3 Shorthand Reporter, do hereby certify:

4 That previous to the commencement of the
5 examination of the witness, the witness was duly
6 sworn to testify the whole truth concerning the
7 matters herein;

8 That the foregoing deposition transcript
9 was reported stenographically by me, was thereafter
10 reduced to typewriting under my personal direction
11 and constitutes a true record of the testimony
12 given and the proceedings had;

13 That the said deposition was taken
14 before me at the time and place specified;

15 That the reading and signing by the
16 witness of the deposition transcript was waived;

17 That I am not a relative or employee or
18 attorney or counsel, nor a relative or employee of
19 such attorney or counsel for any of the parties
20 hereto, nor interested directly or indirectly in
21 the outcome of this action.

22 _____
23 CORINNE T. MARUT
24 CORINNE T. MARUT, Certified Reporter
 Registered Professional Reporter
 License No. 84-1968

25

Joseph Dworak March 13, 2023 Plaintiff's Designations		Defendants' Objection	Plaintiff's Response
Beginning	Ending		
6:8	6:14		
7:12	11:6	9:18-11:6; Relevance: The Open Government division does not provide counsel to the Secretary of State's office. Your proposed use of this testimony for that purpose would be entirely misleading.	This testimony shows (1) the basis of Mr. Dworak's knowledge of record requests and the function of the Open Records division; (2) the function of the Open Records division; and (3) how the Attorney General's office advises various public bodies- <i>like</i> the Secretary of State's Office. The connection between the Attorney General's Office and the Secretary of State's office is relevant to VRF's claim that the two worked in concert to refuse to fulfill VRF's requests for voter data and to chill VRF's speech. <i>Kennicott v. Sandia Corp.</i> , 327 F.R.D. 454, 469 (D.N.M. 2018) ("Relevance is still to be construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on any party's claim or defense.")
16:21	17:4		
19:25	20:12	Relevance; calls for legal conclusion: The testimony recites the statutory language and offers nothing of evidentiary value. Our office does not have a unified position on statutory provisions; attorneys from different division are frequently called upon to litigate against one another and take conflicting positions on these topics. If it was Plaintiff's intention to have the judge on standby	The question calls for the Attorney General's position on lawful uses of New Mexico voter data under § 1-4-5.5 which is relevant to show the Attorney General and Secretary of State's basis to deny VRF access to New Mexico voter data-a key issue in VRF's claims in this case. To the extent Defendants object to the form of the question on the basis it "calls for a legal conclusion," that objection has been waived as Defendants did not specify the basis for their objection

		<p>and conduct the deposition with no speaking objections reserved, they could have specified as such. Having not done so, the risk of asking objectionable questions falls upon the party intending to offer deposition testimony as trial evidence.</p>	<p>during the deposition, stating only: "Objection."</p> <p>Even so, the question calls for the application of facts to law which is not an objectionable legal conclusion.</p>
51:24	52:8	<p>Relevance:</p> <p>The referral is no longer relevant to this case since it is no longer the potential source of any prior restraint. Any restriction on VRF's speech at this point is due to the amended statutes governing use of voter data.</p> <p>Further, the AG's position is contained in the pleadings in this matter and this testimony adds nothing of evidentiary value.</p>	<p>The question calls for the Attorney General's position on whether or not VRF has violated the New Mexico election code, which is relevant to VRF's claims regarding the Secretary of State's referral of VRF to the Attorney General for investigation and prosecution. It is also relevant to show the reasoning behind Defendants' actions in this case to deprive VRF of New Mexico voter data.</p> <p>Further, just because Defendants' may have merely stated a position in pleadings does not somehow preclude VRF from testing those assertions.</p>
53:18	53:25		
54:19	54:24		
68:11	68:18	<p>Relevance:</p> <p>The AG's view of misinformation is of no relevance to this case</p>	<p>This testimony concerns the Attorney General's position regarding whether VRF's speech constitutes misinformation. The content of VRF's speech and Defendants' position regarding that speech are relevant to VRF's First Amendment claims as well as its NVRA claims to show Defendants' basis for denying VRF voter data and referring VRF for investigation and prosecution.</p>
70:7	70:21	<p>Relevance:</p> <p>The witness's legal conclusions remain irrelevant.</p>	<p>The question of whether or not Local Labs has violated New Mexico election law was interjected by Defendants as a</p>

			possible reason for refusing to fulfill VRF's requests for voter data and are thus relevant to illustrate Defendants reasoning for doing so.
72:1	72:19	Relevance The Secretary has disclosed voter data to VRF and indicated her intention of continuing to do so under the same terms as other users of voter data. It is no longer relevant why requests were denied as it pertains to that particular transaction, since VRF may only receive prospective relief in this case.	The question of whether or not Local Labs has violated New Mexico election law was interjected by Defendants as a possible reason for refusing to fulfill VRF's requests for voter data and are thus relevant to illustrate Defendants reasoning for doing so.
73:8	73:21	Relevance: The testimony reiterates the litigation position articulated by the office in the pleadings and offers nothing of evidentiary value.	This testimony is relevant to show Defendants' basis for conspiring to not fulfill VRF's requests for voter data and for criminal investigation. The cited testimony also, itself, references positions stated in pleadings which relate to VRF's claims that Defendants unlawfully denied VRF's requests for voter data.
73:22	74:13		
74:14	75:10	Relevance: The Secretary has disclosed voter data to VRF and indicated her intention of continuing to do so under the same terms as other users of voter data. It is no longer relevant why requests were denied as it pertains to that particular transaction, since VRF may only receive prospective relief in this case.	This testimony is relevant to VRF's claims that Defendants are unlawfully working together to deny VRF's requests for New Mexico voter data because it shows Defendants' purported reasons for the same.
84:8	84:18		
98:18	99:14		
100:1	101:16		

106:9	106:12	<p>Foundation; Relevance:</p> <p>The questioning does not establish that the AG's office has any means of directly ascertaining whether registrations have been cancelled or whether there is any way of determining whether registrations were cancelled for a particular reason.</p>	<p>The question merely asks for the Attorney General's knowledge. If the Attorney General does not possess such knowledge, the witness is entitled to say so.</p> <p>This question is also highly relevant as Defendants have themselves interjected the issue of canceled voter registrations into this litigation as a defense for denying VRF's requests for voter data. If the Attorney General is unaware of any canceled voter registrations yet works with the Secretary of State to deny VRF's voter data requests on that basis, then that shows Defendants' reasoning is mere pretext.</p>
128:16	129:14	<p>Relevance:</p> <p>Neither the denial of voter data nor the statute as written at the time of the deposition have any relevance to this litigation any longer. VRF is not entitled to retrospective relief on these issues.</p>	<p>The question of what is a permissible use of voter data is highly relevant to this litigation because Defendants have argued they are denying VRF's requests for voter data because they are not using the data for a permissible use. If the Attorney General cannot answer questions as to what is a permissible use under the law, that goes to show that the law, as written and applied, is vague and overbroad.</p>
130:20	131:16	<p>Relevance:</p> <p>Neither the denial of voter data nor the statute as written at the time of the deposition have any relevance to this litigation any longer. VRF is not entitled to retrospective relief on these issues.</p>	<p>The question of what is a permissible use of voter data is highly relevant to this litigation because Defendants have argued they are denying VRF's requests for voter data because they are not using the data for a permissible use. If the Attorney General cannot answer questions as to what is a permissible use under the law, that goes to show that the law, as written and applied, is vague and overbroad.</p>

144:7	144:16	<p>Relevance:</p> <p>As noted above, this is not relevant to VRF's claims, which can only address prospective relief.</p>	<p>This question directly relates to the legal basis for the Attorney General's criminal investigation of VRF, which VRF has argued is a basis of its First Amendment claims. If the Attorney General cannot say whether the legal basis previously articulated by the Attorney General's office is correct, then that shows that Defendants' stated basis for criminal referral and investigation is pretextual.</p>
156:10	156:15	<p>Foundation; Relevance:</p> <p>The document being addressed does not make promises regarding voter data, only "personal information of voters." The question and answer encapsulate the heart of the dispute in this case and this testimony adds nothing on that front.</p>	<p>The Attorney General's knowledge of VRF's consistent promise not to post New Mexico voter data online is highly relevant to Defendants' true reasons for denying VRF's requests for voter data which underpin VRF's First Amendment claims.</p>
159:2	159:11	<p>Requests attorney-client privileged information; relevance:</p> <p>The question calls for the contents of privileged communications and any substantive response would quite obviously violate that privilege.</p>	<p>It is unclear from Defendants' objection why they believe the above testimony to be privileged. Nonetheless, this testimony is not privileged because it does not ask for the actual communication between the Attorney General's office and the Secretary of State. Instead, the question only seeks to ascertain the fact of whether any communication happened.</p> <p>Whether or not the Attorney General advised the Secretary of State to deny VRF's request for voter data is highly relevant to the whether or not Defendants worked together to deny VRF's requests for voter data—a point which the Attorney General has argued throughout this litigation and in</p>

			the 10th Circuit on the basis of standing.
159:16	159:24		
160:22	161:17		
165:6	167:5		
167:16	172:24	<p>Relevance:</p> <p>At no point in this litigation has VRF produced evidence that would substantiate their claims that Catalyst or i360 sell New Mexico Voter Data. In the absence of such evidence, the fact that they were not investigated is irrelevant.</p>	<p>This testimony concerns whether the Attorney General has criminally investigated other, similarly situated entities as VRF. This line of questioning is relevant to whether or not Defendants maintain a consistent interpretation of the New Mexico election code and whether they enforce that election code consistently, or discriminatorily in order to deprive VRF of New Mexico voter data under that pretext.</p>
176:19	177:9		
179:12	180:2	<p>Foundation; Relevance:</p> <p>The witness is a 30(b)(6) witness and is not charged with knowing how every independent Assistant AG would view any particular facts with regard to a potential investigation.</p>	<p>Defendants' mere objection to "foundation" is unclear. However, the foundation for the Attorney General's answer and the question itself is simply the Attorney General's factual knowledge. The Attorney General's lack of knowledge of or concern of other entities using New Mexico voter data in a way similar to VRF shows the discriminatory nature with which Defendants have acted towards VRF to deny VRF's requests for New Mexico voter data.</p> <p>As a 30(b)(6) witness, the purpose of the witness's testimony is to testify on behalf of the Attorney General. If the witness cannot truthfully answer the question, then Defendants' should have proffered a witness who could.</p>
180:12	180:16		
184:19	184:23	Relevance:	This testimony concerns the "clarity" of § 1-4-5.5 and its recent

		The former law is no longer relevant to this litigation.	amendments which is relevant to VRF's claim that the law is vague and overbroad.
186:12	186:16	Relevance: The former law is no longer relevant to this litigation.	This testimony concerns the "clarity" of § 1-4-5.5 and its recent amendments which is relevant to VRF's claim that the law is vague and overbroad.

Joseph Dworak March 13, 2023 Defendants' Designations	
Begin	End
17:5	17:16



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Litigation Services

Deputy Attorney General Joseph Dworak

March 13, 2023

Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

<p style="text-align: center;">Page 6</p> <p>1 gritty. So I want to fly through the beginning, and 2 we're going to take a lunch break and get through 3 this, do some foundational stuff before that.</p> <p>4 So that all being said, do you have any 5 questions? That all sounds good from the get-go 6 here? Anything you take issue with?</p> <p>7 A. No questions.</p> <p>8 Q. Perfect. And as we get started here, you 9 know, if I refer to the Attorney General or the AG, 10 just know that I'm referring to the office, not the 11 Attorney General himself. It seems silly to say 12 that, but nevertheless.</p> <p>13 To start out here, I'm going to hand you 14 what we've already marked as Exhibit 1. 15 (Exhibit 1 marked.)</p> <p>16 A. Just so you know, that's the only thing I 17 have with me is just a copy of the Exhibit A.</p> <p>18 Q. Perfect. Okay. Can you tell me what this is?</p> <p>19 A. This is a notice of the deposition for the 20 30(b)(6) witness.</p> <p>21 Q. And have you seen this document before?</p> <p>22 A. I have.</p> <p>23 Q. And you've just stated that you have a copy here with you?</p>	<p style="text-align: center;">Page 8</p> <p>1 middle of law school and worked in Washington, D.C. 2 for an FCC commissioner. And then I came back and 3 finished my last semester of law school. And I 4 started my first job here at the AG's Office.</p> <p>5 Q. And can you walk me through the 6 different -- have you had different roles in the AG's 7 Office since you've been here?</p> <p>8 A. I have, yeah. My first job was a line 9 attorney in the Civil Division, which is now the Open 10 Government Division. I had that job for about 11 two-and-a-half years or so. And then I was the 12 Deputy Director of the Open Government Division. And 13 then -- also for about two-and-a-half years. And 14 then I was the Civil Litigation Director also for 15 about two-and-a-half years. Then I left this office 16 for about a year-and-a-half, and then came back in 17 January with the new administration as the Deputy 18 Attorney General for Civil Affairs.</p> <p>19 Q. Okay. What are your duties generally as 20 the Deputy Attorney General?</p> <p>21 A. They're evolving a little bit with the 22 transition, with the new administration. But 23 generally, I oversee several divisions, including the 24 Open Government Division, the Civil Litigation 25 Division, the Treaty of Guadalupe Hidalgo Division,</p>
<p style="text-align: center;">Page 7</p> <p>1 A. I do.</p> <p>2 Q. Okay. If you turn to page -- well, it's 3 marked page 2; it's actually the third page of the 4 exhibit I handed you. Do you see a list of 10 topics 5 on that page?</p> <p>6 A. Yes.</p> <p>7 Q. Have you seen this list of topics before?</p> <p>8 A. I have.</p> <p>9 Q. Are there any topics listed on that page on 10 which you're not prepared to testify today?</p> <p>11 A. No.</p> <p>12 Q. Okay. Can you give me a walk-through of 13 your background? Let's start with your education, 14 undergrad, and law school.</p> <p>15 A. Sure. I went to the University of New 16 Mexico in Albuquerque, and received a degree in 17 political science and psychology. I took a little 18 bit of time off and worked, and then came back to 19 Albuquerque, and went to the University of New Mexico 20 School of Law.</p> <p>21 Q. Okay. And can you walk me through -- I 22 guess, let's start from your first job out of law 23 school until your position now. If you could walk me 24 through the roles you've had.</p> <p>25 A. Well, I took a little bit of a break in the</p>	<p style="text-align: center;">Page 9</p> <p>1 and some other areas of the office, expanding on, 2 including tribal work, government transparency, and 3 some other areas in the civil side of the office that 4 might not necessarily fall in the form of litigation.</p> <p>5 Q. Who do you report to in your current role?</p> <p>6 A. The Chief Deputy Attorney General.</p> <p>7 Q. And do you have people that report directly 8 to you?</p> <p>9 A. Yes.</p> <p>10 Q. And who would those people be? You can 11 just tell me their roles. I don't need to know --</p> <p>12 A. Well, any division director that's under 13 me. We have one division that doesn't have a 14 division director at the moment, so it's an exempt 15 position we need to fill. So any management 16 positions, or anyone that doesn't have a position 17 that's filled would report to me.</p> <p>18 Q. Can you tell me a little bit about the Open 19 Government Division that you referenced? What kind 20 of work does the Open Government Division do?</p> <p>21 MS. LECOCQ: Objection. Go ahead.</p> <p>22 A. Yeah -- well, one, I don't -- I mean, I 23 could tell you generally, but that, the role of that 24 division is going to change with the new 25 administration also.</p>

Page 10

1 Q. I guess first question: What did that
 2 division do while you were working in that division?
 3 MS. LECOCQ: Objection.
 4 A. Generally, provides representation and
 5 legal assistance to about 80, or so, public boards
 6 and commissions and small agencies in the state.
 7 Q. What's the scope of that representation?
 8 Is it primarily related to IPRA and open records and
 9 open meetings kind of issues, or is it broader than
 10 that?
 11 MS. LECOCQ: I'm just going to do a
 12 standing objection to relevancy just so I don't have
 13 to keep objecting.
 14 THE COURT: Sure.
 15 A. So it really depends. New Mexico is a very
 16 unique state. And it also is -- it's -- that role of
 17 representation really depends on the public body that
 18 we're working with. So some boards and commissions
 19 are administratively attached to other agencies. And
 20 those agencies have in-house counsel, and so the role
 21 is much more narrow, and only provides assistance,
 22 really, for matters that become before the public
 23 body. So disciplinary decisions and orders, rule
 24 making, other matters that fall within the purview of
 25 the public body, in terms of the things that need to

Page 11

1 be voted on in a public meeting, and others, they're
 2 broader because they're not administratively attached
 3 to another agency that provides legal counsel for
 4 things like contracts, and, you know, other matters
 5 that might be more of day-to-day work with the public
 6 body.
 7 Q. What was your involvement in this case
 8 before you were designated to be the representative
 9 for this deposition?
 10 A. I didn't have a specific involvement with
 11 the case.
 12 Q. And I guess I'm asking specifically first
 13 with the civil case itself, you didn't have any
 14 involvement?
 15 A. Not that I recall, no.
 16 Q. Okay. And what about the -- were you
 17 involved in any criminal investigation conducted by
 18 the Attorney General regarding Voter Reference
 19 Foundation?
 20 MS. LECOCQ: Objection.
 21 A. Not that I recall, no.
 22 Q. What did you do to prepare to testify
 23 today?
 24 A. Well, I reviewed the pleadings, records in
 25 the case, so all of the pleadings that have been

Page 12

1 filed, the discovery, interrogatories, answers,
 2 requests for production; spoke with counsel; spoke
 3 with two special agents in the case.
 4 Q. Well, who were the special agents that you
 5 spoke to regarding this?
 6 MS. LECOCQ: Objection.
 7 A. I should clarify -- I said with the case.
 8 They weren't with this case, but two special agents
 9 that I know I spoke to about later in a parallel
 10 proceeding, or parallel matter, I guess, is the
 11 proper term.
 12 Q. By the "parallel matter" do you mean the
 13 criminal investigation?
 14 MS. LECOCQ: Objection.
 15 A. Yeah.
 16 Q. Just making sure.
 17 Did you review the district court's
 18 decision which granted a preliminary injunction to
 19 our client last July?
 20 A. I'm familiar with that. I've looked at
 21 that. But that wasn't in preparation for this.
 22 Q. Okay. Have you reviewed any transcripts of
 23 any hearings in this matter?
 24 A. No, I don't believe I have.
 25 Q. Okay. Have you reviewed any transcripts of

Page 13

1 any depositions taken in this matter?
 2 A. No.
 3 Q. Did you help prepare any answers to any of
 4 the discovery responses that were given by the
 5 Attorney General's Office in this matter?
 6 A. No.
 7 Q. But you did say that you have reviewed
 8 those responses in preparation for today; correct?
 9 A. Yes.
 10 Q. I want to talk kind of just generally,
 11 before we dive specifically into VoteRef, or VRF,
 12 about the Attorney General's Office and its role in
 13 relation to voter data in general. And when I say,
 14 "voter data" here, I'm just going to adopt the
 15 statutory definition which says: Any information
 16 derived from the voter files. So know when I say
 17 "voter data" I'm meaning the same term that New
 18 Mexico law uses for that.
 19 So, generally, what is the Attorney
 20 General's role regarding oversight of how voter data
 21 is used?
 22 A. Well, it very much would depend upon the
 23 context. But just like many laws in the state, the
 24 Office of the Attorney General is charged with
 25 enforcing New Mexico State law. And, you know, what

4 (Pages 10 to 13)

<p style="text-align: center;">Page 14</p> <p>1 that enforcement looks like very much depends upon 2 the facts of the situation.</p> <p>3 Q. Is there a specific division or group of 4 people in the Attorney General's Office that would 5 kind of be assigned to policing unlawful use of voter 6 data?</p> <p>7 A. The individuals in our office that would be 8 involved with issues related to voter data or any 9 voter issues would depend upon how we obtain the 10 information related to it.</p> <p>11 So, I mean, yeah, I guess there is not a 12 clear answer. It's not limited just to one group of 13 people in the office.</p> <p>14 Q. Does the Attorney General's Office have a 15 role related to voter data, other than investigating 16 potential unlawful use of voter data?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. The Office of the Attorney General's role, 19 again, is very much dependent upon what the referral 20 is. It could come from members of the public. It 21 could come from a role with providing assistance to 22 the Secretary of State, monitoring elections. It 23 could come from a referral from the Secretary of 24 State. It could come from a referral from somewhere 25 else.</p>	<p style="text-align: center;">Page 16</p> <p>1 advice to the Secretary about whether or not it 2 should provide voter data to a requester?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. Is that speculative? I mean, I guess I'm 5 not sure if you're asking has that happened in the 6 past, or could that, or would that happen?</p> <p>7 Q. Well, let's say: Has that happened in the 8 past, has the Attorney General's Office given advice 9 to the Secretary about whether it should provide 10 voter data to a requester?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I mean, part of -- certainly, some of that 13 would be privileged, if we were --</p> <p>14 Q. And I'm not asking for the content.</p> <p>15 A. Yeah, I mean those, questions certainly 16 have come up in the past.</p> <p>17 Q. Would you agree that the Attorney General's 18 Office has a duty to investigate the actual or 19 potential misuse or unlawful use of voter data?</p> <p>20 A. Can you ask that question again?</p> <p>21 Q. So would you agree that the Attorney 22 General's Office has a duty to investigate the actual 23 or potential misuse of voter data?</p> <p>24 A. That question would depend on the 25 circumstances. I mean, if it's more appropriate for</p>
<p style="text-align: center;">Page 15</p> <p>1 Q. So let's say you, the Attorney General's 2 Office, receives a complaint from a citizen about 3 something related to their voter data. Would that be 4 handled in-house, or would that be referred to, say, 5 the Secretary of State's Office?</p> <p>6 A. It depends on what the allegations are. I 7 mean, many of those are often referred to the 8 Secretary of State, which obviously is the agency 9 charged with enforcing and reviewing election laws on 10 a daily basis. And, you know, our office works in 11 conjunction with them, if there is something that, 12 you know, after their review, if there is something 13 that we need to look at from a civil or criminal 14 standpoint.</p> <p>15 Q. I'm not asking for any advice you might be 16 giving here. But does the Attorney General's Office 17 advise the Secretary of State's Office if there is a 18 question regarding whether voter data is being used 19 unlawfully?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 A. I mean, generally, we certainly have the 22 ability to -- and have -- I can't say that every time 23 there is a question we would necessarily have to be 24 involved, or have been involved.</p> <p>25 Q. Does the Attorney General's Office provide</p>	<p style="text-align: center;">Page 17</p> <p>1 that -- at least initial investigation or review to 2 be done by, say, the Secretary of State, who is 3 charged statutorily with enforcing and reviewing 4 those laws, then you might start there.</p> <p>5 So it doesn't mean that anytime that there 6 is an alleged allegation it would necessarily have to 7 be us exclusively, or us first. We certainly -- our 8 office certainly has the ability and duty, when 9 appropriate, to investigate those kind of issues.</p> <p>10 Q. And what if the Attorney General's Office 11 receives a referral from the Secretary of State's 12 Office saying: Hey, we think that voter data is 13 being used unlawfully, does the Attorney General's 14 Office then have a duty to investigate that?</p> <p>15 A. We certainly have the authority to. I 16 don't know if we have an affirmative duty to.</p> <p>17 Q. Has the Attorney General's Office ever 18 initiated an investigation into the use of voter data 19 without receiving a referral from, say, the Secretary 20 of State's Office or a citizen complaint?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. That's outside of the scope of these 23 questions. I don't know the history of, you know, 24 100 year history of our office. I couldn't speak to 25 that.</p>

<p style="text-align: center;">Page 18</p> <p>1 Q. Are you aware of the Attorney General 2 initiating an investigation into the use of voter 3 data on its own volition since you've been at the 4 Attorney General's Office?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. From my own standpoint? I can't speak to 7 the office, because again, that's outside of the 8 scope of what I prepared for with this deposition. 9 But not that I'm aware of. But I wouldn't 10 necessarily be aware of it either because of my role 11 inside the office.</p> <p>12 Q. Okay. Well, I'm going to move right in. I 13 want to talk generally about the Attorney General's 14 positions on how New Mexico law regulates voter data. 15 And I want to start from a high level, just -- we're 16 going to talk about some of the statutes that have 17 been raised in this case. And then kind of move into 18 how that applies to our present case. But, just 19 generally, what restrictions does New Mexico law 20 place on how voter data may be used?</p> <p>21 MS. LECOCQ: Objection.</p> <p>22 A. Yeah, I don't -- I wasn't prepared to talk 23 about all of the different types of laws and the 24 Election Code that could potentially be implicated 25 related to voting. So could you be a little bit more</p>	<p style="text-align: center;">Page 20</p> <p>1 under -- let's limit it to 1-4-5.5?</p> <p>2 MS. LECOCQ: Objection.</p> <p>3 A. Well, first, I'll say that there are other 4 laws that are implicated here. This can't be read in 5 just a vacuum. But clearly, requesters of this 6 information can only use voter data for these listed 7 purposes, which include governmental purposes and 8 election campaign purposes. And it also explicitly 9 states that the data shall not be made available or 10 used for unlawful purposes. And so I know that there 11 is another law that clarifies use and limitations of 12 voter data.</p> <p>13 Q. I noticed when you were going over the 14 permissible uses there, you omitted election from the 15 uses that are permissible. Is that intentional?</p> <p>16 MS. LECOCQ: Objection.</p> <p>17 A. Well, I was just clarifying the two that 18 are defined here in the statute.</p> <p>19 Q. But you agree that Subsection C of this 20 statute says can be used for -- shall be used for 21 governmental or election and election campaign 22 purposes only?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. That's what the statute says.</p> <p>25 Q. Okay. You mentioned that there are other</p>
<p style="text-align: center;">Page 19</p> <p>1 specific?</p> <p>2 Q. Well, let's start with what restrictions 3 does New Mexico law place on the sharing or 4 dissemination of voter data?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. Yeah, I mean, I have the same answer. I 7 can't speak generally to that. But as some of the 8 examples that relate specifically to this case tie 9 into the limitations on the use of data, that they 10 have to be for authorized purposes. And so that's 11 laid out pretty clearly in the statute what those 12 purposes can and can't be used for, and the process 13 of the Secretary of State's Office has for requesting 14 such data.</p> <p>15 Q. What are the purposes that voter data can 16 be used for? And let's limit it to under Section 17 1-4-5.5, which is the one implicated in this case.</p> <p>18 A. Do you have a copy of the statute?</p> <p>19 Q. I'm sure we do. We can go ahead and mark 20 this as Exhibit 2.</p> <p>21 (Exhibit 2 marked.)</p> <p>22 Q. If you can let me know when you've had time 23 to review it.</p> <p>24 A. Yeah, I finished.</p> <p>25 Q. So for what purposes can voter data be used</p>	<p style="text-align: center;">Page 21</p> <p>1 laws that are implicated here, I believe was the word 2 you used. What other laws are implicated?</p> <p>3 A. Well, there is a number. I mean, there is 4 statute, the entire Election Code, of course, and 5 then there is regulations that are adopted by the 6 Secretary of State under the state Election Code.</p> <p>7 I know that there is -- I can't recall the 8 section, but in Article 5, I believe, there is a 9 section that describes unauthorized use and what that 10 includes, which is prohibited under state law.</p> <p>11 Q. What's the relationship, then, between this 12 1-4-5.5 and this other section that you're referring 13 to?</p> <p>14 MS. LECOCQ: I'm going to have a standing 15 objection for legal conclusion, so I quit 16 interrupting you.</p> <p>17 MR. MUELLER: Certainly.</p> <p>18 A. Yeah, well, I'll say one -- a legal 19 conclusion that I could draw is not necessarily the 20 conclusion of our office. And also these are laws 21 that govern the Secretary of State's Office. And so, 22 you know, it's difficult for me to answer, you know, 23 how these should be interpreted when this isn't a 24 statute that governs activity of the office of the 25 Attorney General.</p>

<p style="text-align: center;">Page 50</p> <p>1 plausibly alleged that VRF was violating New Mexico 2 law?</p> <p>3 A. Our office hasn't made a determination -- 4 there is different laws here, right, and criminal 5 implication and actions of the Secretary of State's 6 Office. So, I mean, our position was to defend the 7 Secretary of State. There wasn't a separate 8 determination by our office.</p> <p>9 Q. What do you mean when you say your 10 "position was to defend the Secretary of State"?</p> <p>11 A. Well, I mean, that's the basis of this 12 litigation is the Secretary of State's Office, an 13 agency of the state, was sued, and we were defending 14 the Secretary of State's position and the actions 15 that they had taken.</p> <p>16 Q. Okay. But let's look at this. This 17 referral is dated December 20, 2021; correct?</p> <p>18 A. Correct.</p> <p>19 Q. Do you know when your office received this 20 referral?</p> <p>21 A. I don't see a time stamp. I don't know 22 what day, if it came -- well, it says email, so I 23 would assume it was emailed that day. But I don't -- 24 I can't confirm that.</p> <p>25 Q. Did your office receive this referral prior</p>	<p style="text-align: center;">Page 52</p> <p>1 law?</p> <p>2 A. That's the position that we have supported 3 through this litigation. And I think, you know, what 4 penalties or what additional laws could be violated 5 is like an independent matter from a criminal 6 standpoint, it's different from upholding any, you 7 know, administrative decision by the Secretary of 8 State, which I think is important to note.</p> <p>9 Q. Setting the referral aside, and what it 10 says the positions that the SOS took in the referral, 11 is the Attorney General's position, as we sit here 12 today, that Voter Reference Foundation has violated 13 New Mexico law?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, again -- and I mean, I know we're 16 going to get to this -- but there are parallel issues 17 in questions. And this case is, you know, primarily 18 focused on the administrative decision of the 19 Secretary of State and our position which supports 20 it, which is yes.</p> <p>21 You know, could there be additional 22 determinations that our office could make? Yes. But 23 the office hasn't taken independent action or 24 taken -- you know, made separate decisions apart from 25 the specific issue related to this case, which is the</p>
<p style="text-align: center;">Page 51</p> <p>1 to VRF filing its lawsuit?</p> <p>2 A. These dates I recall, but I'd have to 3 refresh my memory on what the dates were. I know 4 some of these dates were close together.</p> <p>5 Q. If I tell you that VRF filed its lawsuit in 6 late March of 2022, does that refresh your 7 recollection?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So did your office receive this 10 referral before VRF filed its lawsuit?</p> <p>11 A. Yes.</p> <p>12 Q. So you were saying that -- I asked a 13 question about, at the time it received the referral, 14 did the Attorney General agree that the facts 15 outlined in the referral plausibly alleged that VRF 16 was violating the law?</p> <p>17 A. I mean, some of that is subject to attorney 18 work product and attorney-client privilege with the 19 Secretary of State's Office. I mean, I think the 20 work done by our office clearly shows the position 21 that we took, which supported the determination by 22 the Secretary of State that New Mexico laws were 23 being violated.</p> <p>24 Q. Is that the Attorney General's position, as 25 we sit here today, that VRF has violated New Mexico</p>	<p style="text-align: center;">Page 53</p> <p>1 determination by the Secretary of State.</p> <p>2 Q. You used the term "administrative decision" a few times there. Can you tell me what you mean by that?</p> <p>5 A. Well, the decision by the Secretary of State is not a judicial decision. It's not something that required a court determination to make. And so they chose to withhold this voter data from -- as an administrative action.</p> <p>10 Q. So when you say "administrative decision," you're referring to them not giving data to VRF?</p> <p>12 A. Correct.</p> <p>13 Q. You're not referring to them making this referral?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. I just --</p> <p>17 A. No, that's a good distinction.</p> <p>18 Q. I'm trying to think how to ask this. In terms of this civil litigation, is the Attorney General taking the same position as the SOS as to the legality of Voter Reference's actions?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. Well, I think that's pretty clear in the pleadings that we filed and representing the Secretary of State in the pleadings, so yes.</p>

<p style="text-align: right;">Page 54</p> <p>1 Q. And I think we can acknowledge a 2 difference, that there is one role for the Attorney 3 General's Office that is representing Secretary of 4 State in the litigation. There is another role, 5 which is the Attorney General is the chief law 6 enforcement officer, and is, itself, a defendant in 7 the litigation. Do you agree with that?</p> <p>8 A. Yes. And yeah, there are many roles that 9 the Attorney General's Office plays within the state.</p> <p>10 Q. And so I suppose I'm saying that just 11 because the Attorney General's Office is representing 12 the Secretary of State in this litigation, it doesn't 13 necessarily have to mean that the Attorney General is 14 taking all of the same legal positions as the 15 Secretary of State; correct?</p> <p>16 A. I'd have to see if there was anything in 17 the pleadings that have made that position. But 18 that's not impossible, certainly.</p> <p>19 Q. Are you aware of any positions that the 20 Attorney General's Office, as a party to this 21 lawsuit, has taken that are different than positions 22 taken by the Secretary of State's Office?</p> <p>23 A. Public positions, actions, I'm not aware of 24 any, no.</p> <p>25 Q. I want to get into the referral more, but</p>	<p style="text-align: right;">Page 56</p> <p>1 what does it mean for a case to be -- let's say -- 2 let me rephrase this. 3 If I refer to a case as open or active, can 4 we agree that that means the same thing? I think you 5 just used the word "open." They've used the term 6 inactive?</p> <p>7 A. Sure. I think much of this could very well 8 be subjective, right, but I think those two terms are 9 very synonymous.</p> <p>10 Q. So what does it mean for an investigation 11 to be active or open?</p> <p>12 A. That it's under investigation.</p> <p>13 Q. What does it mean for a case to be closed?</p> <p>14 A. That there had been some dispositive 15 action. Whether there had been a prosecution, 16 whether there was, you know, findings taken at face 17 value would not amount to any type of crime, so, 18 therefore, the dispositive action was that, you know, 19 no law was implicated. It could mean that the 20 investigation was put on hold, you know, or something 21 else. It wasn't, you know, determined if there was a 22 violation or not.</p> <p>23 Q. Okay. What does inactive mean? Or let me 24 be more specific. What is your understanding of what 25 it meant for a case to become inactive at the time</p>
<p style="text-align: right;">Page 55</p> <p>1 before we do that I want to ask some questions 2 generally before we get into the stuff that your 3 counsel and I have already negotiated some protection 4 for. And I think this is in your discovery response. 5 So your counsel informed us last week that the 6 investigation into VRF became inactive, I believe, on 7 April 12, 2022; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. What are the different -- I'm going to call 10 "inactive" a status, okay? What are the different 11 statuses of investigation by your office?</p> <p>12 A. That's a great question. I can speak 13 generally to my understanding. I have not -- some of 14 that very much is dependent upon the administration, 15 which has changed, and the individuals. I think 16 those categories are not set in stone. Because what 17 they might mean might be somewhat subjective.</p> <p>18 But our office -- criminal matters in our 19 office, the most common would be open or closed. And 20 I think the inactive status is -- and you could use 21 different terms, and imagine different terms have 22 been used in the past, where it's not as definitive, 23 because, you know, a formal position might not be 24 taken. And that could be for a variety of reasons.</p> <p>25 Q. This is going to seem very rudimentary, but</p>	<p style="text-align: right;">Page 57</p> <p>1 this case became inactive, which was April 12, 2022?</p> <p>2 A. I was not aware of the -- at that time, in 3 2022, I wasn't even in the office. When did I -- 4 yeah, I wasn't even in our office at that time. So I 5 mean, certainly at that time I didn't have any idea. 6 But I know that speaking to individuals within our 7 office, that term means that, just like I said 8 before, that it wasn't under active investigation; 9 that it was not -- you know, there was nothing 10 happening to the case. No final determination was 11 made. And that there was no, you know, ongoing 12 involvement from our office.</p> <p>13 Q. I want to clarify one thing. You said 14 closed meant that there is some kind of dispositive 15 action, which I believe you said can include 16 prosecution, findings of facts that amount to a 17 crime, or you said that it may just be that it's on 18 hold?</p> <p>19 A. No, I said that was if it was inactive --</p> <p>20 Q. Okay.</p> <p>21 A. -- not closed.</p> <p>22 Q. So if it's on hold, it would likely be 23 labeled as inactive or some similar term?</p> <p>24 A. Yeah.</p> <p>25 Q. Okay.</p>

<p style="text-align: center;">Page 66</p> <p>1 time?</p> <p>2 A. Well, it depends on -- I guess there is two 3 different -- this is a criminal -- if you're 4 referencing a criminal determination as to whether it 5 was a criminal law being violated, there certainly 6 was not a determination made at the time this letter 7 was received.</p> <p>8 Q. Okay. If we move on a little further in 9 that paragraph, it says, "We have attached our 10 office's communication with Mr. Lippert regarding his 11 voter data request. We believe that this data was 12 illegally provided by Mr. Lippert or Local Labs to 13 VoteRef.com and is being used against New Mexico 14 state law." Did I read that correctly?</p> <p>15 A. Yes.</p> <p>16 Q. So at least at this time, the Secretary of 17 State was conveying its position to the Attorney 18 General that the transfer of data from Local Labs to 19 VoteRef was illegal; correct?</p> <p>20 A. That's what they're writing in this letter.</p> <p>21 Q. It then says, "Swift action is needed as 22 voter data can quickly be manipulated and used to 23 spread election misinformation."</p> <p>24 Did I read that incorrectly?</p> <p>25 A. Yes.</p>	<p style="text-align: center;">Page 68</p> <p>1 ahead.</p> <p>2 A. Not that term. But I think that term is 3 also not defined. Protecting information is part of 4 election information, misinformation.</p> <p>5 So again, I think read in a vacuum, no, 6 there is no reference to election misinformation or 7 spreading election misinformation as a cause of 8 action or elements to it. But I think that's 9 speaking broadly, and does capture many of the 10 purposes of the Election Code.</p> <p>11 Q. Does VRF's publication of voter data on its 12 website constitute election misinformation?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. I don't believe our office has taken a 15 formal position on that, but I believe that the 16 Secretary of State's Office has. And we would 17 support that position, as much as they've made that a 18 defendant.</p> <p>19 Q. Okay. If we look at the next section, it 20 lays out some facts -- it appears to be facts upon 21 which the basis of this referral are grounded. And 22 it talks about how Mike Lippert was provided voter 23 data by the Secretary of State's Office on April 15, 24 2021. Is that correct?</p> <p>25 A. Yes.</p>
<p style="text-align: center;">Page 67</p> <p>1 Q. Is spreading election misinformation a 2 crime under New Mexico law?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. That is not a defined term that has 5 elements that would constitute a crime. But I think 6 this isn't written in any type of legal document 7 that's laying out charges and elements of a crime. I 8 think it's just speaking.</p> <p>9 Q. I understand that, and I appreciate the 10 distinction. But I'm just asking, you know, for your 11 position, as the representative of the New Mexico 12 Attorney General's Office, if it is a crime under New 13 Mexico law to spread election misinformation?</p> <p>14 MS. LECOCQ: Objection.</p> <p>15 A. Yeah, I mean, I can't draw a legal 16 conclusion. And also, I mean, there aren't elements 17 to that. But I think that is part of protecting 18 voter information, so -- and they're alluding -- I'm 19 assuming that they're alluding to public policy, 20 which is certainly, you know, underlined in all of 21 the Election Code and the purpose for these statutes.</p> <p>22 Q. Okay. Are you aware of any New Mexico 23 state statute which makes it unlawful to spread 24 election misinformation?</p> <p>25 MS. LECOCQ: Objection -- never mind, go</p>	<p style="text-align: center;">Page 69</p> <p>1 Q. It then says, "Mr. Lippert was provided the 2 entire statewide voter file after he paid \$5,378.12, 3 and signed a vote information authorization form 4 swearing they, quote, 'will not use or make available 5 to others to use the requested material for purposes 6 others than governmental election research and 7 campaign purposes, under penalty of law.' Did I read 8 that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Did Local Labs commit false swearing under 11 that term quoted there, when it transferred the data 12 from itself to VRF?</p> <p>13 MS. LECOCQ: Objection.</p> <p>14 A. Yeah, I think you're asking for a legal 15 conclusion, which I can't make. I'm not sure if this 16 was addressed in positions taken by our office or the 17 Secretary of State in pleadings.</p> <p>18 Q. If the Secretary of State's Office took the 19 position that that was an unlawful transfer, which it 20 appears that they did from the part we just read 21 above, does the Attorney General's Office have any 22 reason to disagree with that position?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Again, it would be difficult for me to 25 analyze that and put it in context with anything that</p>

<p style="text-align: center;">Page 70</p> <p>1 we filed with the litigation, because, you know, 2 there could have been nuances to any position or 3 argument we've made. And I don't want to 4 misrepresent anything. But I don't see why we 5 wouldn't agree and support the Secretary of State's 6 position with that.</p> <p>7 Q. Okay. And I think, again, you know, I'm 8 asking for positions now based off of the facts and 9 the law, not necessarily, you know, just reciting the 10 positions that have been taken.</p> <p>11 So the facts in here as alleged -- in fact, 12 as alleged in the verified complaint in our federal 13 lawsuit -- admit that Local Labs transferred the data 14 to VRF.</p> <p>15 Okay. Knowing that, did Local Labs commit 16 false swearing by transferring that data from VRF 17 based off the quoted term here?</p> <p>18 MS. LECOCQ: Objection.</p> <p>19 A. Yeah, I can't draw that conclusion. But I 20 would say, generally, that would make sense to me. I 21 mean, that's logical.</p> <p>22 Q. Okay. That quoted section says, "Will not 23 use or make available to others to use, the requested 24 material for purposes other than governmental 25 election research and campaign purposes under penalty</p>	<p style="text-align: center;">Page 72</p> <p>1 at one singular point did the violation occur. 2 I don't know if that answers -- I'm happy 3 to try to better answer your question. 4 Q. I understand what you're saying. But I 5 believe one of the positions taken in this litigation 6 is that, you know, Local Labs committed false 7 swearing, because they agreed to this term, and then 8 they gave data to VRF. 9 Knowing that, I'm asking if Local Labs gave 10 the data to VRF for purposes that were governmental, 11 election research, or campaign purposes, would that 12 still be a violation? 13 A. It could be if they lost control, and 14 therefore, you know, in an agency relationship, you 15 know, that argument could be made. And, again, 16 that's dependent upon all of the facts in this fact 17 pattern, which, you know, there were more obviously 18 beyond that, at which point the issue was raised. 19 At that point alone, yeah, arguably maybe 20 not. But that's not where the facts ended. 21 Q. So does that become a false swearing 22 because VRF published the data on its website? 23 A. I think arguably that's part of it, at 24 least part of it. 25 Q. What if Local Labs didn't know how VRF was</p>
<p style="text-align: center;">Page 71</p> <p>1 of law." I read that correctly again, did I not? 2 A. Yes. 3 Q. Do you agree with me that, if Local Labs 4 makes the data available to someone for a 5 governmental election research or campaign purpose, 6 it has not violated the agreement there in that 7 quoted section? 8 MS. LECOCQ: I'm going to just do a 9 standing objection. I think this is outside the 10 scope of our topics. I'll just leave it at that. 11 A. So, at which step this sharing of 12 information violated New Mexico law, one has to be 13 taken in context. And that context is what happened, 14 right? It may not be clear exactly at what point the 15 misuse of data occurred. 16 But certainly, the end result, which was 17 published in a way that allowed no control over the 18 use of it, violated the restricted use of the data, 19 right, the prohibited uses that are allowed for by 20 statute. 21 So there certainly is a good argument to be 22 made that at that point sharing could have limited 23 that control. But you could make the argument in the 24 alternative as well. And I understand that. But, I 25 mean, you know, this issue wasn't resolved from just</p>	<p style="text-align: center;">Page 73</p> <p>1 going to use the data? 2 MS. LECOCQ: Objection. 3 A. Again, that's a hypothetical that -- I 4 mean, I'm not going to answer hypothetical questions 5 that our office certainly hasn't taken a position on, 6 and the Secretary of State certainly hasn't taken a 7 position on, at least in terms of conclusions of law. 8 Q. If VRF has taken the position that it posts 9 this information online so that the public can police 10 errors in voter records, is that a governmental 11 purpose under New Mexico law? 12 MS. LECOCQ: Objection. 13 A. Arguably, no. 14 Q. Okay. I get arguably. But is it the 15 Attorney General's position that the publication of 16 voter data online, so that citizens could police the 17 voter records, was not a governmental purpose? 18 MS. LECOCQ: Objection. 19 A. Yeah, I think that position has been made 20 pretty clear in the pleadings that we have taken that 21 position. 22 Q. Is it the Attorney General's position that 23 that same posting was not an election purpose? 24 MS. LECOCQ: Objection. 25 A. Well -- and again, our office's position</p>

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1 has only been made clear through these pleadings. I
 2 mean, there is not any other action or position that
 3 we've taken.

4 I think the position was the Secretary of
 5 State's Office that we're supporting and defending.
 6 So, you know, indirectly, yes.

7 Q. So the Attorney General's Office is taking
 8 the same position as the Secretary of State's office
 9 with regard to whether or not the posting was
 10 election related?

11 MS. LECOCQ: Objection.

12 A. Yeah, I mean our position has been
 13 consistent with the Secretary of State's.

14 Q. Is that your position as the attorneys
 15 defending the Secretary of State, or is that the
 16 Attorney General's position as a party to this case?

17 A. I think that position has been made clear
 18 that it's both.

19 Q. Same question: Is it the Attorney
 20 General's position, as a party in this case, that
 21 this -- the publishing of voter data was not for a
 22 research purpose?

23 MS. LECOCQ: Objection.

24 A. And you mean the publishing for the public;
 25 is that correct, for anyone?

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1 Q. Upon receiving this, to determine if a
 2 violation occurred, would the Attorney General's
 3 Office investigate whether, in fact, this voter data
 4 was online?

5 MS. LECOCQ: Objection.

6 A. Are we -- so we're speaking to the criminal
 7 referral; is that correct?

8 Q. Yes.

9 A. I think any type of referral -- this one
 10 included -- would require a thorough review of the
 11 facts and the law. So I mean, that's certainly one
 12 of the facts that would have to be considered.

13 Q. And would the Attorney General's Office
 14 investigate the purpose for which the data was being
 15 posted online?

16 MS. LECOCQ: Objection.

17 A. Again, I mean, any review of alleged
 18 violations of law, whether criminal or civil, would
 19 necessarily require that, because that's one of the,
 20 you know, elements of or conditions of the data use
 21 under the statute.

22 Q. And would the Attorney General investigate
 23 how VRF obtained the data?

24 MS. LECOCQ: Objection.

25 A. I mean, again, all of this is very fact

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1 Q. Yes, I'm speaking about the ultimate
 2 publication of the data online to the public.

3 A. Yes. Yes, that's our position. That's my
 4 understanding that's the position of the Secretary of
 5 State's Office and our office as well.

6 Q. And is it the position of the Attorney
 7 General's Office, as a party to this litigation, that
 8 that public posting on the website was not for a
 9 campaign purpose?

10 A. Yes.

11 Q. When the Attorney General's Office received
 12 this referral, what facts did it need to figure out
 13 to determine if a violation occurred?

14 MS. LECOCQ: Objection.

15 A. Yeah. I mean, that's -- that analysis, I
 16 think, would be dependent on many things, including
 17 the position the individuals that did the analysis --
 18 so I can't speak to exactly what we would require,
 19 you know, these five questions be answered. But I
 20 mean, I think we've discussed this generally to
 21 determine under, you know, the review and actions
 22 taken by the Secretary of State, whether that
 23 position was supported by law, and you know, whether
 24 the publication and use of this data violated any of
 25 the Election Code or related statutes.

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1 specific with, you know, where the -- where any
 2 investigation is at, in terms of timing; what other
 3 information is needed from agencies that refer; what
 4 type of allegations are being raised, what laws are
 5 being implicated. And so I can't speak to the, you
 6 know, exactly what happened or should have happened
 7 with this investigation with this specific case,
 8 right?

9 Q. I suppose the position taken in the
 10 litigation is that the publication of the voter data
 11 on the website to the general public violated New
 12 Mexico law. What more would the Attorney General's
 13 Office need to determine other than that the data was
 14 posted online to the general public?

15 MS. LECOCQ: Objection.

16 A. I'm -- in terms of a criminal
 17 investigation?

18 Q. Yes.

19 A. I mean, a criminal investigation can branch
 20 out and look at many different elements of law. So I
 21 mean, I can't speak to whether or not, you know, this
 22 might cause review of other statutes, right, other
 23 criminal laws being implicated. I mean, it's very
 24 fact specific. I mean, specific to this -- I guess,
 25 yeah, I'm not really sure -- I guess I'm not really

20 (Pages 74 to 77)

<p style="text-align: right;">Page 82</p> <p>1 the issue. I'm not asking about the -- you know, 2 policy decisions, or likelihood of success of an 3 actual prosecution. But certainly the decision about 4 whether or not the law was violated, or a position on 5 that issue is resolved before all those other things 6 are considered.</p> <p>7 So I'm asking -- knowing that we admitted 8 to what seems like the relevant facts for determining 9 if we violated the law under this theory, are there 10 other facts -- facts only, not other 11 considerations -- that the Attorney General's Office 12 needed to investigate to take a position on this 13 issue?</p> <p>14 MS. LECOCQ: Objection. Answer the 15 question, Joe.</p> <p>16 But before we get there, I think if you 17 wanted to know specifically why the Attorney 18 General's Office has not sought out other facts, we 19 can answer that. But that goes to the stuff that's 20 confidential.</p> <p>21 MR. MUELLER: Let's finish this question 22 and, then I'll go into that, because I think that 23 might be causing --</p> <p>24 MS. LECOCQ: Yeah.</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 84</p> <p>1 investigation of VRF and some of the questions that 2 we know are going to be under our agreement. I don't 3 think all of these questions are subject -- at least 4 not to the AEO counsel restrictions -- but I've 5 marked in my outline where I think that's going to 6 come up. So I will disclaim that before I ask those. 7 MS. LECOCQ: All right.</p> <p>8 Q. Let's start with: Did the Attorney General 9 conduct an investigation into VRF's activities prior 10 to April 12, 2022?</p> <p>11 A. The office opened an investigation.</p> <p>12 Q. Okay. Did it take steps to actually 13 investigate the facts and theories as raised in the 14 Secretary of State's referral?</p> <p>15 A. It, at least, began reviewing, you know, 16 the laws that were implicated, the evidence that was 17 received from the referral from the Secretary of 18 State's Office.</p> <p>19 Q. Okay. I'll just -- so this part, we'll 20 call it Attorneys Eyes Only, and I'll let you know 21 when we're outside of that restriction.</p> <p>22 So the investigation was, say, moved from 23 active or open to inactive on April 12, 2022; 24 correct?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. So if you could answer that question, I 2 appreciate it. If it needs to wait for me to ask you 3 the stuff that's going to be protected, I can 4 appreciate that.</p> <p>5 A. Yeah. And I think what's important to note 6 here is that a decision from our office, or a 7 position from our office, if we're talking about a 8 formal position, is different than internal, you 9 know, does an attorney believe that a law was 10 violated.</p> <p>11 When our office takes positions on criminal 12 matters, it's a very big deal. And so those other -- 13 what I'm also calling facts, because they are facts 14 and other things that affect any type of criminal 15 investigation by our office -- have to be considered. 16 We cannot make decisions in a vacuum in criminal 17 cases.</p> <p>18 I don't think any law enforcement agency, 19 prosecutorial law enforcement agency, can do that. 20 It's just not -- I mean, maybe it's a rare example, 21 but, you know, you can't do that. This office cannot 22 take positions on pieces of a criminal investigation, 23 you know, without considering all of these other 24 things that we've discussed.</p> <p>25 Q. Okay. I'm going to go into the actual</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. What was the reason for why it was moved to 2 inactive?</p> <p>3 A. That was a few months after the case was 4 transferred. The investigation was transferred to 5 the FBI.</p> <p>6 Q. Was that decision in any way motivated by 7 VRF filing the present lawsuit?</p> <p>8 A. No.</p> <p>9 Q. Does the Attorney General's Office continue 10 to play any role in that investigation by the FBI?</p> <p>11 A. No.</p> <p>12 Q. Is it possible for the Attorney General's 13 investigation to be reopened or reactivated in your 14 office?</p> <p>15 A. Yes.</p> <p>16 Q. Has the AG conducted any sort of 17 investigation of VRF since April 12, 2022?</p> <p>18 A. No.</p> <p>19 MS. LECOCQ: Objection. I just want to 20 clarify, criminal or civil?</p> <p>21 MR. MUELLER: Let's say criminal first.</p> <p>22 A. No criminal.</p> <p>23 Q. Okay. And what about civil investigation?</p> <p>24 A. The civil investigation related to this 25 litigation and our work with the Secretary of State.</p>

<p style="text-align: center;">Page 98</p> <p>1 Q. And are you aware, generally, of what the 2 purpose of these communications were?</p> <p>3 A. I am.</p> <p>4 Q. And what was that purpose?</p> <p>5 A. To -- the purpose -- similar -- well, 6 except this was on our own, we initiated this 7 communication -- but it was similar to the 8 communication initiated by California, which is 9 normal by our office to consult points of contact in 10 other attorneys general offices, to see if similar 11 issues are being addressed by other offices, if they 12 have any perspective on the issue, if it's a regional 13 or potentially national issue. And so I think that 14 was the -- that's my understanding of the purpose.</p> <p>15 Q. Was this part of the criminal investigation 16 of Voter Reference Foundation?</p> <p>17 A. No.</p> <p>18 Q. Does the Attorney General have any evidence 19 that VRF has manipulated voter data?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 A. Yeah -- well, one, I wouldn't be able to 22 speak to the -- any type of investigative work 23 product that persons that we may or may not be 24 looking at. And I'm not aware of manipulation -- but 25 I am not aware of manipulation arguments in any of</p>	<p style="text-align: center;">Page 100</p> <p>1 Q. Is the Attorney General's Office aware of 2 anyone using VRF's website for unlawful purposes?</p> <p>3 MS. LECOCQ: Objection, same objection.</p> <p>4 A. Again, yeah, I wouldn't know, and I 5 couldn't speak to criminal investigation of that. 6 But I think, you know, using it -- I mean, the fact 7 that it's out there and in an unrestricted setting, 8 so anyone could use it, is the unauthorized use, 9 because there is no control over how people use it. 10 That, itself, is the issue.</p> <p>11 Q. So is a person committing unlawful use by 12 accessing the data that's on the website, or that was 13 on the website?</p> <p>14 A. That's a great question. But I don't think 15 that's a conclusion that our office has come to yet. 16 Because I don't think individuals access this data 17 that's out there is part of any of the analysis or 18 positions our office has taken.</p> <p>19 Q. Is the Attorney General aware of anyone 20 using the data that was posted on VRF's website to 21 stalk any individual?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. I wouldn't be able to speak to any type of 24 criminal investigation, which, you know, would 25 obviously be more serious for a question of that</p>
<p style="text-align: center;">Page 99</p> <p>1 the civil litigation.</p> <p>2 Q. Is the Attorney General's Office aware of 3 VRF misrepresenting any voter data that was posted on 4 its website?</p> <p>5 A. Misrepresenting any voter data? In the 6 civil litigation?</p> <p>7 Q. I'm asking if the Attorney General's Office 8 has any knowledge that VRF has misrepresented any 9 data that was posted on its website?</p> <p>10 MS. LECOCQ: Objection.</p> <p>11 A. Yeah, I wouldn't be able to speak to any 12 potential criminal investigation that may have been a 13 part of that question. But from the civil context, 14 I'm not aware of that being raised.</p> <p>15 Q. And I suppose, given your answer here, I'm 16 just going to ask your counsel if you're invoking a 17 privilege as to not disclose the evidence that the 18 Attorney General might have from its criminal 19 investigation regarding the manipulation or 20 misrepresentation of voter data by VRF?</p> <p>21 MS. LECOCQ: That's right.</p> <p>22 MR. MUELLER: Can we get on the record what 23 the privilege assertion is?</p> <p>24 MS. LECOCQ: Investigative work product.</p> <p>25 Attorney client.</p>	<p style="text-align: center;">Page 101</p> <p>1 context. But I don't believe that there was any 2 evidence that we introduced as part of a civil 3 litigation or have said publicly of individual cases 4 that actually have occurred.</p> <p>5 Q. Is the Attorney General aware of anyone 6 using data that was posted on VRF's website to harass 7 any other individual?</p> <p>8 MS. LECOCQ: Objection.</p> <p>9 A. Again, to the criminal investigation 10 context, I can't speak to that. But I think, also in 11 the civil context, the term "harass" is pretty 12 subjective, I mean, what that means. But I'm not 13 aware of any individual cases, individual person, 14 that we've raised this example, either in the 15 litigation or any other type of public position on 16 it.</p> <p>17 Q. Has the Attorney General investigated 18 whether anyone used the data that was posted on VRF's 19 website for any of those purposes?</p> <p>20 MS. LECOCQ: Objection.</p> <p>21 A. So speaking just to this litigation --</p> <p>22 Q. I wanted the criminal investigation.</p> <p>23 MS. LECOCQ: Can you rephrase your 24 question?</p> <p>25 Q. Has the Attorney General conducted an</p>

<p style="text-align: right;">Page 126</p> <p>1 Q. If we go to the next answer provided, it 2 says: "Answer: 'Publishing online,' could be 3 construed to mean anything from making an internal 4 list of registered voters for use in an internal 5 website, or secured website, or maintaining that 6 information on an internal website for others to 7 access internally, such as on Google Drive, or 8 sending mass emails to voters as part of a campaign. 9 The AG believes this type of 'publishing' used within 10 the context of permissible government or election 11 campaign use, is acceptable, whereas 'publishing' to 12 the general public is not." Did I read that correct? 13 A. Yes. 14 Q. Is that the position of the AG's Office as 15 we sit here today? 16 A. I believe it is. 17 Q. What's the difference between an internal 18 website and an external website? 19 A. I think, again, that would be a 20 fact-specific analysis, right? What type of 21 protections? You know, it's not always black and 22 white. But I think, generally, that would be a 23 website that is not accessible except to people 24 within that entity. And, you know, an external site 25 would be something that was generally public, you</p>	<p style="text-align: right;">Page 128</p> <p>1 contracted to coordinate mailings, right, and has 2 that close agency relationship or contractor 3 relationship. So, again, I don't think you can just 4 use one example and say definitively this applies to 5 any type of situation.</p> <p>6 Q. You seem to be getting back to the idea of, 7 you know, internal and external to the organization 8 as kind of all encompassing for what publishing is 9 and is not allowed. And I'm trying to understand if 10 the internal, external, you know, analysis is one 11 factor, and this general, public, unsecure website, 12 internal/external website, is a different factor. If 13 those are really the same thing, and the means of 14 keeping the data within the entity is to have a 15 password protected website for that entity's members. 16 So my question is: If VoteRef's website 17 was secured so that only people that want to 18 volunteer to further VoteRef's mission can sign up 19 for user name and password access to data, is that 20 permissible?</p> <p>21 A. Again, it would have to depend on the 22 circumstances and the control of that data, and if 23 that even falls within the permitted uses.</p> <p>24 Q. Let's assume here that it is being used by 25 the end user for a permitted purpose. Does the fact</p>
<p style="text-align: right;">Page 127</p> <p>1 know, generally available to the public.</p> <p>2 Q. Does it have to be password protected to be 3 an internal website? 4 A. Again, it's a fact-based analysis. I think 5 that's just one factor that would have to be 6 considered to whether or not, you know, something is 7 publicly available and shared outside of an entity or 8 not.</p> <p>9 Q. And I'm sure you can appreciate that I'm 10 trying to figure out the terms that your office used, 11 and just reaffirm here is your position, actually 12 means, because, you're right, internal to me doesn't 13 really have a meaning without knowing what your 14 office's position on what "internal" means. 15 So, again, I'm just going to ask: Is it 16 your office's position that a -- let's say a website 17 that requires someone have a user name and password, 18 is that an internal website or external website? 19 A. It depends on who is using it. 20 Q. Okay. The people using it are people that 21 signed up for a user name and password? 22 A. I mean, that could be limitless people that 23 are outside of the entity, with no control over their 24 use, or it could be, you know, campaign 25 representatives or a contractor who has been</p>	<p style="text-align: right;">Page 129</p> <p>1 that the website requires a user name and password 2 mean that it's lawful to use it in that manner?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. Yeah, because I can't draw a conclusion 5 without knowing all of the facts, because I think the 6 facts of who has access and what controls are still 7 available, and assurances that there is that 8 connection with the organization; it's not just 9 anyone, right? And that there is not a risk of that 10 information being used for unlawful purposes. So I 11 think all of that would be very -- you know, would 12 require a thorough review of the circumstances and 13 the facts and the scope of the use and the scope of 14 the individuals with access.</p> <p>15 Q. Can anyone volunteer to do work for a 16 campaign? 17 A. I don't think I could just go and volunteer 18 for a campaign and they would give me access to this 19 type of information, if that's what you're asking.</p> <p>20 Q. That wasn't my question, but I appreciate 21 that answer. 22 You seem to draw a distinction between 23 whether VoteRef is just providing data under this set 24 of facts to anyone. But what's the difference 25 between someone saying: I want to volunteer for a</p>

<p style="text-align: right;">Page 130</p> <p>1 campaign to use it for campaign purposes, and I want 2 to volunteer to help VoteRef use it for a purpose 3 which, for the sake of this question, we're presuming 4 is permissible?</p> <p>5 MS. LECOCQ: Objection.</p> <p>6 A. I think that type of use, there are clear 7 distinctions. And a volunteer -- campaigns don't 8 just let anyone volunteering for the campaign get 9 access to all of that information. It's maintained, 10 and you know, they can't then -- there is no 11 protections -- or there would be protections, 12 arguably, for that information only to be used for 13 that limited purpose. And it's within that nebulous 14 of the campaign. Campaigns don't post this 15 information on their website and say: Anybody that 16 wants to volunteer, here's all of this information, 17 and you can go use it however you see fit. And we 18 don't have examples of that that I'm aware of 19 happening, like VoteRef is doing in this case.</p> <p>20 Q. What if VoteRef was selling the data to 21 third parties who agreed by contract that they would 22 only use it for permissible purposes?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Yeah, again, I can't speculate to a 25 conclusion. I mean, that's just not relevant to the</p>	<p style="text-align: right;">Page 132</p> <p>1 raised. What type of control mechanisms are there? 2 And who, knowingly or not, allowed this information, 3 which is protected, to be used for unlawful purposes? 4 So I think it would be a very fact-specific analysis.</p> <p>5 Q. So I understand you as saying that the 6 legality of the transfer of the data, at least in 7 part, hinges on how the data is going to be used by 8 the recipient. Am I correct in saying that?</p> <p>9 A. Yeah.</p> <p>10 Q. If a citizen contacts VRF and says: Hey, I 11 looked at your website. My data is incorrect. And 12 VRF informs, let say the relevant county clerk, that 13 the data is incorrect. Has VRF violated the law by 14 pointing out that the inaccuracy to the county clerk?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Yeah, I can't get into hypotheticals. One, 17 I mean, this isn't any type of determination that the 18 Secretary of State's Office or our office has made. 19 And, you know, I can't speak to a legal conclusion. 20 I mean, that's going to be something that's argued in 21 the pleadings in this case.</p> <p>22 Q. But do you understand that the allegation 23 that VRF has made in this case is that that is 24 precisely why they have this website, is to identify 25 discrepancies and communicate those discrepancies, or</p>
<p style="text-align: right;">Page 131</p> <p>1 facts in this case. But I'd have to look more 2 closely at the statute and the rules, and what 3 amounts to an agreement with the Secretary of State's 4 Office, and the use for this data, and whether or not 5 that type of use, you know, subsequent sale or 6 distribution is authorized. I think it clearly would 7 go against the statutes, arguably the statutory and 8 legislative intent of ensuring that the Secretary of 9 State's Office is the one that maintains control and 10 protection over this information. And just by 11 allowing it to be disseminated, without these 12 requests to the Secretary of State's Office, 13 following this process that's provided in law, 14 would -- you know, it certainly violates the intent 15 as well as the process -- the intent of the law and 16 the process set up by the Secretary of State.</p> <p>17 Q. Can VRF share the data that it has in its 18 possession with its own employees?</p> <p>19 MS. LECOCQ: Objection.</p> <p>20 A. That would first depend upon whether or not 21 the use is permitted, right, by law. Our contention 22 is that it still is not. And it would depend upon 23 what mechanisms there are to control, right? Just 24 like a campaign that started sharing this information 25 broadly -- I mean, the same questions would be</p>	<p style="text-align: right;">Page 133</p> <p>1 errors or whatever you want to call them, to the 2 relevant officials so they can be remedied?</p> <p>3 A. I understand that's the argument being 4 raised, yeah.</p> <p>5 Q. Okay. If we assume the truth of that 6 argument, if that is actually how the data is being 7 used, is that permissible under 1-4-5.5?</p> <p>8 MS. LECOCQ: Objection.</p> <p>9 A. Yeah, I mean, again, I think that this is 10 addressed in our arguments in the case and the 11 position taken by the Secretary of State as the 12 decision-maker in denying this information or this 13 data. But, yeah, I think that that is for unlawful 14 purposes.</p> <p>15 Q. Okay. I put a binder of transcripts in 16 front of you, and I put one in front of your counsel 17 as well. If we can turn to that binder.</p> <p>18 MR. MUELLER: I don't know -- I mean, these 19 are all in the record. We can label this as an 20 exhibit if we want. If you want to deal with a copy 21 of it, you can.</p> <p>22 MS. LECOCQ: I don't think it's necessary.</p> <p>23 MR. MUELLER: I don't think so either.</p> <p>24 Q. Okay. Let's start with the very first 25 transcript. This is from the May 17, 2022 hearing on</p>

<p style="text-align: right;">Page 142</p> <p>1 "The basis for the Attorney General's assertion that 2 VRF, or anyone acting in concert with it, violated 3 New Mexico law or may have violated New Mexico law."</p> <p>4 Okay. I want to move on to the second 5 transcript. That's the 6/15/22. This is a 6 continuation of the preliminary injunction hearing. 7 Looking at page 225, line 20. Let me know when 8 you're there.</p> <p>9 A. Yeah, I've read it.</p> <p>10 Q. I'm going to read, starting at page 225, 11 line 20. And I will first represent that if you go 12 back to page 223, this is Ms. Serafimova speaking. 13 "Now, on a substantive challenge, again, we do -- 14 given our interpretation of 5.5, we do concede that 15 plaintiffs have not violated any of the use 16 restrictions, because those use restrictions do not 17 prohibit uploading the data to a website. That is 18 under 5.36. So that doesn't change our theory."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes.</p> <p>21 Q. Was that the Attorney General's position at 22 the time of this hearing?</p> <p>23 MS. LECOCQ: Objection.</p> <p>24 A. Again, you know, I was not -- it was a 25 different administration, and this individual is no</p>	<p style="text-align: right;">Page 144</p> <p>1 complicated question, given both the criminal and 2 civil angles from this. But I mean, generally, the 3 positions are: The actions taken, and the use of 4 this information is not in compliance with New Mexico 5 law. I mean, individual legal arguments, you know, I 6 think that's separate. But generally, yeah.</p> <p>7 Q. Okay. Then, I'm going to ask you to look 8 at 1-4-5.6 and 1-5-22 as we sit here now. We've 9 already looked at these and confirmed the language, 10 so I'm not going to belabor that. Is it the Attorney 11 General's position, as we sit here today, that 12 1-4-5.6 incorporates the prohibitions of 1-5-22(a) to 13 make Voter Reference Foundation's publication of data 14 unlawful?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. I can't draw that conclusion.</p> <p>17 Q. Are you aware if that's a position that's 18 been taken in this case, let's say, since the filing 19 of the first amended complaint?</p> <p>20 A. I'm aware of competing arguments regarding 21 the applicability of the criminal penalties and 22 competing arguments about what applies and what 23 doesn't. But I can't recall right now where we're 24 currently at with this argument.</p> <p>25 Q. What do you mean "competing arguments"?</p>
<p style="text-align: right;">Page 143</p> <p>1 longer employed by our office. I presume there is no 2 reason that I have, that I'm aware of to, you know, 3 challenge any positions that she took.</p> <p>4 Q. Is the Attorney General's Office willing to 5 state, at least prior to the filing of the first 6 amended complaint, that the representation made by 7 counsel for the Attorney General accurately reflect 8 the positions of the Attorney General's Office?</p> <p>9 A. I couldn't answer that without consulting 10 with counsel.</p> <p>11 Q. So you're not willing to state whether 12 these are accurate representations of the Attorney 13 General's position?</p> <p>14 MS. LECOCQ: Objection. I think -- if it 15 helps, I think we can stipulate that this was the 16 reflection of the Attorney General Hector Balderas at 17 the time that this was done, yes.</p> <p>18 Q. Has the Attorney General's position on this 19 case changed since the new Attorney General took 20 over?</p> <p>21 A. What do you mean by "position"?</p> <p>22 Q. Position on whether VRF has engaged in 23 unlawful activity.</p> <p>24 MS. LECOCQ: Objection.</p> <p>25 A. Yeah, I mean, I think that that's a</p>	<p style="text-align: right;">Page 145</p> <p>1 You mean between plaintiff and defendants --</p> <p>2 A. Yeah.</p> <p>3 Q. -- or internally?</p> <p>4 A. Plaintiffs and defendants.</p> <p>5 Q. Are you aware that VRF has made requests 6 for voter data to the Secretary of State, let's say, 7 since it acquired the data from Local Labs?</p> <p>8 A. Yes.</p> <p>9 Q. Are you aware that all those requests have 10 been denied?</p> <p>11 A. Yes.</p> <p>12 Q. I think we are moving into our next 13 confidentiality segment here, just a warning there. 14 Not there quite yet, but these questions might bleed 15 over pretty quickly.</p> <p>16 (Exhibit 11 marked.)</p> <p>17 Q. Handing you what I've marked as Exhibit 11. 18 Have you seen this document before?</p> <p>19 A. I don't -- it looks familiar. It may have 20 been in one of the many hundreds of pages of 21 documents that I reviewed that included some email 22 correspondence. But I can't say definitively. I 23 think that this was in there.</p> <p>24 Q. Okay. I'm just going to read from the 25 first line here. It says, "Per Dylan's contact with</p>

<p style="text-align: right;">Page 154</p> <p>1 A. I mean, that's stated in this letter, so 2 yes.</p> <p>3 Q. Okay. The second to the last paragraph, 4 "To further clarify another point, you have not 5 complied with NMSA 1978 Section 1-4-5.5 in requesting 6 voter data, by not submitting the required 7 affidavit."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. So you would agree with me that this 11 request was denied, at least in part, because no 12 affidavit was provided?</p> <p>13 A. Yeah, that's what it says.</p> <p>14 (Exhibit 13 marked.)</p> <p>15 Q. I'm handing to you what we've marked as 16 Exhibit 13. Have you seen this document before?</p> <p>17 A. It also looks familiar. Everything is 18 starting to blur together a little bit, but it looks 19 like one of the documents that was included in the 20 documents I've reviewed for this deposition.</p> <p>21 Q. Okay. Can you tell me what this document 22 is?</p> <p>23 A. It is a letter from your law firm to the 24 Secretary of State.</p> <p>25 Q. Would you agree with me -- well, let me</p>	<p style="text-align: right;">Page 155</p> <p>1 recently published voter data in New Mexico, VRF 2 intends to publish the requested information online 3 for election related purposes, but it will only 4 publish the personal information of voters online if 5 VRF is granted relief in" -- and then it lists this 6 case. And it says, "or in any other legal 7 proceeding."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. And so would you agree with me that VRF is 11 representing, through counsel here, that it will not 12 publish the personal information of voters online 13 unless a court gives them relief saying they can do 14 so?</p> <p>15 A. That's what it says.</p> <p>16 Q. I'm going to continue on the last 17 paragraph. "For its second project, VRF intends to 18 analyze the records, information, and data provided 19 in response to the above requests in order to engage 20 in a discrepancy review of the New Mexico voter 21 rolls. VRF intends to publish this analysis online 22 without disclosing the personal information of any 23 voter. VRF will comply with this 24 non-public-disclosure promise for the data it uses on 25 the second project regardless of whether it prevails</p>
<p style="text-align: right;">Page 155</p> <p>1 read the subject line. It says, "Notice of Violation 2 of National Voter Registration Act and Request for 3 Records." Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. Would you agree with me that this, at least 6 on its face -- you can characterize it how you 7 want -- but that this characterizes itself as a 8 request for voter records under the National Voter 9 Registration Act?</p> <p>10 A. Yeah, I mean, that's the subject. It 11 states that it's a notice of violation, or alleged 12 violation, and also a request for records.</p> <p>13 Q. Would you agree with me as well that this 14 is a request for records under Section 1-4-5.5, New 15 Mexico statute?</p> <p>16 A. Yes.</p> <p>17 Q. And it would perhaps help to point your 18 attention to page 4 where it says, "Requests for 19 records."</p> <p>20 A. Yeah.</p> <p>21 Q. I'd like to draw your attention to the 22 second to the last paragraph on page 4. It says, 23 VRF's intended election use comprises two distinct 24 projects. For its first project, just as VRF 25 publishes voter data for many other states, and as it</p>	<p style="text-align: right;">Page 157</p> <p>1 in the federal litigation. And again, for the sake 2 of clarity, no personal information of any voter will 3 be published online unless VRF is granted relief in 4 the federal litigation or in any other legal 5 proceeding."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. And you'll agree that VRF, through counsel, 9 is promising there that it will not publish voter 10 data online absent a court order telling them they 11 can do so?</p> <p>12 A. That's what it says.</p> <p>13 Q. Okay. If you look at page 5 of this, 14 second paragraph, it says, "Signed voter information 15 authorization forms for each of the above requests 16 are attached to this letter as Exhibit B."</p> <p>17 Did I read that correctly?</p> <p>18 A. I'm sorry, which page are you looking at?</p> <p>19 Q. Page 5, second paragraph.</p> <p>20 A. Okay.</p> <p>21 Q. "Signed voter information authorization 22 forms for each of the above requests are attached to 23 this letter as Exhibit B."</p> <p>24 Did I read that correctly?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 158</p> <p>1 Q. And if we flip -- it looks like maybe the 2 Exhibit B label got cut off a little bit. 3 A. Yes. 4 Q. But you'll see two documents there. Can 5 you tell me what those documents are? 6 A. They say, "Voter Information 7 Authorization." It's a form from the Secretary of 8 State. 9 Q. Okay. And what is this form used for? 10 A. I presume it's used for requesting voter 11 data. 12 Q. And you'll agree with me -- if you look at 13 the section on each of these, it says, "Information 14 of Requester," it says, "Name, Gina Swobada, Voter 15 Reference Foundation. Is that correct? 16 A. Yes. 17 Q. Just below that in the Authorization, 18 you'll see that Gina Swobada has signed as the 19 signature of the requester; is that correct? 20 A. Yes. 21 Q. Was VRF given voter data in response to 22 that request? 23 A. I don't believe so. 24 Q. Do you have any reason to think that it 25 was?</p>	<p style="text-align: right;">Page 160</p> <p>1 response? 2 A. Dylan Lange. 3 Q. Okay. I want to draw your attention to the 4 last paragraph on page 2. It says, "With respect to 5 item number 2 and the affidavit you submitted as 6 required by New Mexico law, in the notice VRF states 7 that it 'intends to publish the requested information 8 online for election related purposes, but it will 9 only publish the personal information of voters if 10 VRF is granted relief in' -- citing this case -- 11 -- or in any other legal proceeding." 12 Did I read that correctly? 13 A. Yes. 14 Q. Skipping the citation there, it says, "As 15 you know from the federal litigation and otherwise, 16 it is our position that publishing any" -- with 17 emphasis on the "any" there -- New Mexico voter data 18 on a website is a violation of the New Mexico 19 Election Code that carries criminal liability." 20 Did I read that correctly? 21 A. Yes. 22 Q. At the time this response was sent, did the 23 Attorney General's Office agree with that position? 24 A. I think that would reveal any privileged 25 communication that we would have with the Secretary</p>
<p style="text-align: right;">Page 159</p> <p>1 A. No. 2 Q. Did the Attorney General advise the 3 Secretary of State about whether or not to produce 4 voter data in response to the May 27th request from 5 counsel? 6 A. Well, I can't speak to advice. But my 7 understanding is this is the third request for the -- 8 which is one of the three requests -- or this is one 9 of the three requests -- subsequent requests -- that 10 were denied, that our office was consulted on by the 11 Secretary of State's Office. 12 MR. MUELLER: I think we're outside of the 13 confidentiality. That's the last question. 14 (A discussion was held off the record.) 15 (Exhibit 14 marked.) 16 Q. I'm handing you what we've marked as 17 Exhibit 14. Would you look at that? When you've had 18 a chance to review I'll ask if have you seen this 19 document? 20 A. I believe I have. 21 Q. And can you tell me what this document is? 22 A. It's a letter in response to the request 23 that we were just looking at from the Secretary of 24 State's Office. 25 Q. Okay. And who is the author of this</p>	<p style="text-align: right;">Page 161</p> <p>1 of State's Office. 2 Q. I'm not asking what advice you gave them. 3 I'm asking, as a defendant and litigant in this case, 4 if that is -- if that comports with the position that 5 the Attorney General was taking? 6 A. Our position is that we support the 7 Secretary of State's Office. And so, you know, had 8 we disagreed, you know, I think you could infer that 9 we were having disagreement with our client. So, 10 yeah, I mean we certainly support the position taken 11 by the Secretary of State's Office, and the decision 12 that they made, in our role representing the state 13 and that agency. 14 Q. We can agree that the Secretary effectively 15 denied this request and did not produce voter data to 16 Voter Reference Foundation; is that correct? 17 A. Yes. 18 Q. Okay. I want to compare the denial of the 19 October 18th request, that we just looked at, with 20 the November 17th letter, to the denial here. 21 So we established that in Mr. Lange's 22 November 17, 2022 letter, two of the reasons for 23 which that request was denied -- we'll start with the 24 first one -- it says, "You have not indicated that 25 you will not post any voter data online, and based on</p>

<p style="text-align: center;">Page 162</p> <p>1 your past practice we believe you will do so again."</p> <p>2 You already agreed that I read that</p> <p>3 statement correctly, and that that was one of the</p> <p>4 reasons for denying the request.</p> <p>5 MS. LECOCQ: I'm sorry, which -- you said</p> <p>6 the first one.</p> <p>7 MR. MUELLER: I'm on page 2 of the November</p> <p>8 17, 2022 letter from Dylan Lange.</p> <p>9 MS. LECOCQ: Sorry. Got you. I'm so</p> <p>10 sorry. Go ahead.</p> <p>11 Q. So perhaps to clarify, in the November 17,</p> <p>12 2022 letter, at least one of the reasons for the</p> <p>13 denial of the request was that VoteRef did not</p> <p>14 promise not to publish the voter data online; is that</p> <p>15 correct?</p> <p>16 A. Yeah, that's one of the explanations.</p> <p>17 Q. And in the May 27th request, which was</p> <p>18 subsequently denied on June 16, VoteRef specifically</p> <p>19 stated that it was not going to publish the data</p> <p>20 online without a court order allowing it to do so; is</p> <p>21 that correct?</p> <p>22 A. Yeah, that's what it says.</p> <p>23 Q. Okay. Similarly, in the November 17, 2022</p> <p>24 letter from Mr. Lang, on page 2, as we went over, one</p> <p>25 of the reasons for denial was that VoteRef did not</p>	<p style="text-align: center;">Page 164</p> <p>1 voter data online to the general public?</p> <p>2 A. No, not that I'm aware.</p> <p>3 Q. Is the Attorney General's Office aware of</p> <p>4 any other entity who posts voter data online to</p> <p>5 something less than the general public?</p> <p>6 A. Well, I guess I should also clarify what</p> <p>7 type of voter data, right? I mean, the detail, the</p> <p>8 home addresses, just simply names -- I mean, I think</p> <p>9 it depends on the extent of the data being shared</p> <p>10 also.</p> <p>11 Q. I mentioned this, but it was a long time</p> <p>12 ago. When I'm saying voter data, I'm meaning</p> <p>13 specifically the definition given to voter data in</p> <p>14 1-4-5.5 C, which is -- I want to be clear what we're</p> <p>15 talking about. So when I use the term "voter data,"</p> <p>16 as I stated earlier, voter data, as defined in</p> <p>17 1-4-5.5, Subsection E, paragraph 5. "Voter data</p> <p>18 means selected information derived from the voter</p> <p>19 file."</p> <p>20 So with that clarification, does that</p> <p>21 change your answer to the question: Is the AG's</p> <p>22 Office aware of any entity that publishes voter data</p> <p>23 online to the general public?</p> <p>24 A. Yeah, I mean, not generally, that I'm aware</p> <p>25 of.</p>
<p style="text-align: center;">Page 163</p> <p>1 submit the required affidavit; is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. And if we look at the May 27th request --</p> <p>4 which was then denied on June 16, 2022 -- VoteRef</p> <p>5 included two different affidavits, did it not?</p> <p>6 A. Yes.</p> <p>7 MR. MUELLER: I think we should go ahead</p> <p>8 and take a break and then power through this last bit</p> <p>9 here.</p> <p>10 MS. LECOCQ: Okay.</p> <p>11 (A discussion was held off the record.)</p> <p>12 MR. MUELLER: I have one more topic I want</p> <p>13 to knock out and then that may be it. I'll say a</p> <p>14 caveat. I want to knock this out, maybe take another</p> <p>15 short break, look through my stuff again, and then we</p> <p>16 may be done. So I'm hoping 5:00 for all of our</p> <p>17 sakes.</p> <p>18 Q. Is the New Mexico Attorney General's Office</p> <p>19 aware of any other entity that posts voter data</p> <p>20 online?</p> <p>21 A. Not to my knowledge under similar fact</p> <p>22 patterns that are here. You know, publicly post. I</p> <p>23 mean --</p> <p>24 Q. Let's say specifically, is the Attorney</p> <p>25 General's Office aware of any other entity that posts</p>	<p style="text-align: center;">Page 165</p> <p>1 Q. Okay. Is the AG's Office aware of any</p> <p>2 entity that posts voter data online to something less</p> <p>3 than the general public?</p> <p>4 A. Yeah, not that I'm aware of, that I've been</p> <p>5 privy to conversations about, no.</p> <p>6 Q. Is the Attorney General's Office aware of</p> <p>7 any entity that sells voter data?</p> <p>8 A. Not that I'm aware of, no.</p> <p>9 Q. Does the Attorney General's Office have any</p> <p>10 knowledge of an entity called Catalist?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. Yeah, that name does not ring a bell to me.</p> <p>13 MR. MUELLER: I'm going to give Ms. Lecocq</p> <p>14 a chance, in case she's --</p> <p>15 MS. LECOCQ: Unless I have really</p> <p>16 misinterpreted this, I don't believe -- this is not a</p> <p>17 subject that I -- Catalist and what it did, or what</p> <p>18 our knowledge is, I think is just the knowledge of</p> <p>19 the Secretary of State. I don't believe that the</p> <p>20 Attorney General's Office has any reason to know</p> <p>21 about it. And I don't see it in the topics, unless</p> <p>22 I'm misconstruing these topics.</p> <p>23 MR. MUELLER: Well, I don't want to get</p> <p>24 into too much argument on the record here. But</p> <p>25 certainly, the treatment of VRF, as compared to</p>

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1 different entities that use, share, and even sell
 2 voter data, certainly relates to the claims in our
 3 case, including viewpoint discrimination and the
 4 defenses raised by the parties in this case, one of
 5 which is on appeal, about how we must show disparate
 6 treatments as to us and other entities. So I would
 7 say that there is a category that says, you know,
 8 claims and defenses raised in the litigation. I
 9 think this calls for -- and it's been raised several
 10 times throughout this case. I don't think I'm
 11 surprising you by asking you about it here. I
 12 believe it's also in a discovery response. So to the
 13 extent we've asked for testimony about discovery
 14 responses, then I think we're there.

15 MS. LECOCQ: Mr. Dworak has certainly
 16 reviewed the discovery responses. Do you know which
 17 one?

18 MR. MUELLER: I think as early as
 19 Interrogatory 1.

20 Q. Interrogatory No. 1. Do we have a copy of
 21 this? It says, "State whether you have conducted any
 22 investigation or made any inquiry into the use or
 23 sharing of voter data by Catalyst, i360, or any other
 24 commercial entity that has purchased voter data from
 25 New Mexico" -- goes on.

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1 And then there is an answer from the
 2 Attorney General's Office, which I don't want to read
 3 out loud until I ask about it.

4 MS. LECOCQ: Sure. Let me just refresh his
 5 recollection with this. Sorry, go ahead.

6 MR. MUELLER: Just to clarify, did he hand
 7 you the supplemental responses or the original? Is
 8 it the 3/8 or the 10/20? They're not different, but
 9 it's just important.

10 MS. LECOCQ: This is response, so this is
 11 the initial, not supplemental.

12 MR. MUELLER: I'll note that they're not
 13 different. But I want to note that they're not
 14 different.

15 MS. LECOCQ: That's fine.

16 Q. Okay. So going back to my question, has
 17 the Attorney General ever investigated -- let me
 18 backtrack there. Is the Attorney General aware of
 19 whether Catalyst sells voter data that it receives
 20 from the Secretary of State's Office?

21 A. Not that I'm aware of.

22 Q. And is that the office or is that you
 23 speaking individually?

24 A. That's me speaking on behalf of the office.

25 Q. What about i360? Is the Attorney General

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1 aware of whether or not i360 sells voter data that it
 2 receives from the New Mexico Secretary of State's
 3 Office?

4 A. No, not that I can recall that the office
 5 generally is aware of any investigation or knowledge
 6 of the details.

7 Q. Same question with regard to Aristotle. Is
 8 the Attorney General aware that it sells voter data
 9 that it receives from the New Mexico Secretary of
 10 State?

11 A. The same answer, no.

12 Q. Has the Attorney General ever investigated
 13 any entity, other than VRF, for how it uses voter
 14 data requests from the Secretary of State?

15 MS. LECOCQ: Objection. Go ahead.

16 A. Yeah, I'm not aware of any referral that
 17 would have resulted in any type of investigation of
 18 that sort.

19 Q. Do you have a copy of the supplemental
 20 interrogatories? And we can mark that as Exhibit 15.
 21 (Exhibit 15 marked.)

22 Q. And I'll represent that this document --
 23 thank you for marking that -- it is Defendant Raul
 24 Torrez's First Supplemental Response to Plaintiff
 25 Voter Reference Foundation's First Interrogatories,

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1 Requests for Production and Requests for Admission.
 2 Do you agree with me that that is what this document
 3 is?

4 A. Yes.

5 Q. And if you'd look at -- if you look at the
 6 very last page, the certificate of service, do you
 7 agree with me that these were served on -- or
 8 produced to Voter Reference Foundation on March 8,
 9 2023?

10 A. Yes.

11 Q. Directing your attention to Interrogatory
 12 No. 1 -- that's on page 4 -- Interrogatory No. 1
 13 says, "State whether you have conducted any
 14 investigation or made any inquiry into the use or
 15 sharing of voter data by Catalyst, i360, or any other
 16 commercial entity that has purchased voter data from
 17 New Mexico."

18 Did I read that correctly?

19 A. Did you say Interrogatory No. 4 or 1?

20 Q. I said 1 on page 4.

21 A. Yes, that's correct.

22 Q. And then it says -- well, it says, "If
 23 answered" -- skip that part. You'll note that there
 24 is two objections made, but then a response is given
 25 subject to that objection. Am I characterizing that

43 (Pages 166 to 169)

<p style="text-align: right;">Page 170</p> <p>1 correctly?</p> <p>2 A. Yes.</p> <p>3 Q. And that response says, "Without waiving, 4 and subject to, the foregoing general and specific 5 objections, defendant has not received a referral 6 from a state or county elections agency or a citizen 7 complaint concerning the above-referenced entities. 8 that defendant has not conducted an investigation or 9 inquiry into the above-referenced entities does not 10 preclude defendant from doing so."</p> <p>11 Did I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. You'll agree with me that this is a 14 supplemental response that, as we noted, was served 15 last week?</p> <p>16 A. Yes.</p> <p>17 Q. And I'll represent to you that the initial 18 response to this interrogatory was served on October 19 20, 2022. Would you agree with me that the response 20 has not changed from October 20, 2022 to March 8, 21 2023? And perhaps it would be helpful -- I want to 22 find it to show you. On the requests that were 23 supplemented on March 8, it's noted that there is a 24 supplemental response.</p> <p>25 So taking a step back, can we agree that</p>	<p style="text-align: right;">Page 172</p> <p>1 of those three entities to the attention of the 2 Attorney General?</p> <p>3 A. Not that I'm aware of. Although, 4 they're -- yeah, not that I'm aware of. I mean -- 5 and that's what our answer says, is that we haven't 6 had any referrals or complaints provided to our 7 office. So I think that's consistent with that 8 answer.</p> <p>9 Q. What would it take Voter Reference 10 Foundation giving the AG about these entities for the 11 AG to be concerned that they are selling voter data?</p> <p>12 MS. LECOCQ: Objection.</p> <p>13 A. Again, I think a lot of that is very fact specific. And what complicates this is the ongoing litigation. Defenses raised in litigation are treated a little bit differently, obviously, than a complaint filed or referral from another state agency or a complaint filed by a member of the public or any entity through our complaint process. So, I mean -- and that's how many complaints come through our office. They come through, you know, either a form filled out on our website or by referral from another government entity.</p> <p>24 (Exhibit 16 marked.)</p> <p>25 Q. I'm going to hand you what I've marked</p>
<p style="text-align: right;">Page 171</p> <p>1 there is no supplemental response provided to 2 Interrogatory No. 1?</p> <p>3 A. That's correct.</p> <p>4 Q. So the Attorney General's response to that 5 was the same on October 20, 2022 and March 8, 2023?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware that these entities were 8 specifically identified to the Secretary of State, 9 the Attorney General, and the Court at the 10 preliminary injunction hearings held last summer?</p> <p>11 A. I'm generally aware that -- I mean, 12 throughout this -- that they've been mentioned, and 13 these questions have been asked.</p> <p>14 Q. Does the Attorney General's Office consider 15 VRF's identification of those entities to be a 16 citizen complaint?</p> <p>17 MS. LECOCQ: Objection.</p> <p>18 A. Yeah, I think that would -- what 19 constitutes a citizen's complaint, and what happens 20 from complaints or information received to us -- and 21 we generally know that just raising an allegation or 22 issue in an ongoing case or pleading would not 23 generally constitute any type of formal complaint 24 with our office.</p> <p>25 Q. Has the Secretary of State ever brought any</p>	<p style="text-align: right;">Page 173</p> <p>1 as -- pretty poorly -- as Exhibit 16. Once you've 2 had a chance to review it, can you tell me if you've 3 seen this document before?</p> <p>4 A. No, I don't believe I've ever seen this.</p> <p>5 Q. Just on its face, can you tell me what this 6 document purports to be?</p> <p>7 A. I mean, having never seen it before, it's a 8 little hard for me to do that. But it just says it's 9 a "Declaration of Records Custodian of Aristotle 10 International, Inc.," and there are a number of -- 11 looks like screen shots or -- yeah, screen shots -- 12 from some websites.</p> <p>13 Q. And if we look at the second page of the 14 declaration, will you agree with me that it is signed 15 by a J. Blair Richardson, Jr., who at least purports 16 to be general counsel for this entity?</p> <p>17 A. Yeah, that's what it says.</p> <p>18 Q. Okay. I want to draw your attention to 19 attachment number 2. On page 1, it identifies 20 attachment 2 as, "Aristotle's Test 21 Voterlistsonline.com sales order and agreement used 22 for Aristotle customers wishing to purchase access to 23 New Mexico voter data."</p> <p>24 Did I read that description on page 1 25 correctly?</p>

<p style="text-align: right;">Page 174</p> <p>1 A. Yes.</p> <p>2 Q. So if we turn to attachment 2 --</p> <p>3 MR. MUELLER: And I am going to note that</p> <p>4 this part should be designated "Confidential"</p> <p>5 pursuant to the confidentiality order, protective</p> <p>6 order.</p> <p>7 Q. Have you been able to find attachment 2?</p> <p>8 A. Yes.</p> <p>9 Q. And you'll agree with me at the top it</p> <p>10 says, "Aristotle Now You Know," identifies their</p> <p>11 contact information, and then says, "Aristotle Sales</p> <p>12 Order and agreement"?</p> <p>13 A. Yes.</p> <p>14 Q. If you look down under the kind of darkened</p> <p>15 bar, you'll see it says, "Voterlistsonline.com</p> <p>16 Access; quantity, 1; unit, months; sales price,</p> <p>17 \$1,000." Did I read that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. If you go down under Product Details &</p> <p>20 State Data Restrictions, it reads,</p> <p>21 "Voterlistsonline.com Access." Then it says,</p> <p>22 "Voterlistsonline.com Access" again. "Aristotle will</p> <p>23 provide client with open access to the specific areas</p> <p>24 listed using Aristotle's Voterlistsonline.com service</p> <p>25 for the period listed below. Client will have access</p>	<p style="text-align: right;">Page 176</p> <p>1 used for governmental, election and election campaign</p> <p>2 purposes only, and shall not be made available or</p> <p>3 used for commercial or unlawful purposes."</p> <p>4 Did I read that correctly?</p> <p>5 A. Yeah.</p> <p>6 Q. Would you agree with me that this contract</p> <p>7 purports to be a contract selling access to New</p> <p>8 Mexico voter data?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. Yeah, I mean, I can't -- I don't know</p> <p>11 anything about this, the validity of this, where it</p> <p>12 came from. I mean, it purports that. But I've never</p> <p>13 seen this before.</p> <p>14 Q. Sure. But we can at least agree that it</p> <p>15 says, "Client will have access to New Mexico</p> <p>16 statewide file," and it lists a sales price of</p> <p>17 \$1,000? We can agree to both of those things?</p> <p>18 A. Yeah.</p> <p>19 Q. Does this raise any concern with the</p> <p>20 Attorney General that an entity is selling New Mexico</p> <p>21 voter data?</p> <p>22 MS. LECOCQ: Objection.</p> <p>23 A. Without knowing the context of this, the</p> <p>24 timing, what conditions are placed on it, whether or</p> <p>25 not they have New Mexico data, how much is being</p>
<p style="text-align: right;">Page 175</p> <p>1 to all available updates obtained by Aristotle during</p> <p>2 the term of this contract."</p> <p>3 Did I read that correctly?</p> <p>4 A. Yes.</p> <p>5 Q. It goes on to say, "This contract includes</p> <p>6 access and ability to download files containing all</p> <p>7 standard fields available on Voterlistsonline.com for</p> <p>8 those geographic areas included within this</p> <p>9 contract."</p> <p>10 Did I read that correctly?</p> <p>11 A. Yes.</p> <p>12 Q. Then, if you skip the next paragraph, it</p> <p>13 then says, "Client will have access to NM statewide</p> <p>14 file."</p> <p>15 Did I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. If you go down a little further, it</p> <p>18 says, "New Mexico: (Political Use Only)."</p> <p>19 Do you see where I'm at, at the bottom of</p> <p>20 the page?</p> <p>21 A. Yes.</p> <p>22 Q. "The following apply to the extent required</p> <p>23 by applicable law. Section 1-4-5.5 of the New Mexico</p> <p>24 Election Code: I hereby swear that New Mexico voter</p> <p>25 data, mailing labels and special voter lists shall be</p>	<p style="text-align: right;">Page 177</p> <p>1 used, who it's being used by, all of those</p> <p>2 fact-specific questions, I could not say that our</p> <p>3 office has a concern.</p> <p>4 I certainly have -- we would have</p> <p>5 questions. And also, importantly, the Secretary of</p> <p>6 State's Office, who understands this area of law, is</p> <p>7 charged with, you know, overseeing the use of</p> <p>8 election data, I would certainly want to know what</p> <p>9 they think about it.</p> <p>10 Q. Does the disclaimer that we read at the</p> <p>11 bottom of -- disclaimer is my own word -- the</p> <p>12 paragraph that we read at the bottom of this document</p> <p>13 about "political use only" in referring to 1-4-5.5,</p> <p>14 make Aristotle's sale of this data lawful?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Yeah, I mean, I can't draw a conclusion on</p> <p>17 whether or not this is lawful or not without, again,</p> <p>18 addressing the number of questions that I had, and</p> <p>19 points from the prior question. I mean, I can't say</p> <p>20 that putting some text, and having somebody check a</p> <p>21 box, by itself, is sufficient to absolve any legal</p> <p>22 issues that might be raised.</p> <p>23 Q. We talked earlier about control of the</p> <p>24 data. If this contract is legally binding, does this</p> <p>25 adequately -- does Aristotle adequately maintain</p>

<p style="text-align: right;">Page 178</p> <p>1 control of the data by entering into a binding 2 contract with the person to whom it sells the data to 3 only use it for permissible purposes?</p> <p>4 MS. LECOCQ: Objection.</p> <p>5 A. Yeah, I mean, I can't speculate, having 6 never seen any of this before. And it, you know, not 7 being presented in part of any of the analysis that 8 we've done, opine from our office on whether or not 9 this contract would permit an entity from sharing or 10 selling such data under our state laws.</p> <p>11 Q. Does the purpose for which the buyer of 12 this voter data puts the voter data, once they 13 receive it, affect the analysis of whether Aristotle 14 is violating New Mexico law?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. Again, I can't speculate as to liability on 17 such a hypothetical, without having reviewed it 18 first. It certainly raises a lot of questions that 19 we'd have to review closely.</p> <p>20 Q. I mean, I suppose we're looking at a 21 document here, where this entity is selling New 22 Mexico voter data. So, again, I'm not sure this is a 23 hypothetical. This is -- we're looking at a document 24 and this is what is happening.</p> <p>25 So I'm just simply asking: Does the</p>	<p style="text-align: right;">Page 180</p> <p>1 forward in conversations that we have with the other 2 state agency.</p> <p>3 Q. Is the Attorney General's Office less 4 concerned by the sale of voter data by these 5 commercial entities than it is by what VoteRef was 6 doing with the data?</p> <p>7 MS. LECOCQ: Objection.</p> <p>8 A. Yeah, it's impossible to state any opinion 9 that our office would have, not having any of this 10 information prior to today. So I can't opine on 11 that.</p> <p>12 But, again, certainly the Secretary of 13 State's Office would need to be engaged in 14 understanding this issue and exploring the issue, and 15 determining what steps they may take, with or without 16 our office.</p> <p>17 Q. Did the Attorney General's Office know who 18 Aristotle was before today?</p> <p>19 MS. LECOCQ: Objection.</p> <p>20 A. So, having refreshed my memory, these 21 entities were mentioned in discovery. So, I mean, at 22 least that knowledge. I'm not aware of any -- you 23 know, as I stated before, there is nothing formal, no 24 formal complaints, or any of that action. But 25 certainly our knowledge, just by reference to these</p>
<p style="text-align: right;">Page 179</p> <p>1 purpose towards which the buyer puts the data affect 2 whether Aristotle is lawfully selling the data?</p> <p>3 MS. LECOCQ: Objection.</p> <p>4 A. Again, I could answer this if this was 5 something that we were aware of before in our office. 6 But I can't, you know, on the spot give positions 7 that our office would take, or opinions our office 8 would have, on something our office has never seen 9 before. And obviously, there is more to whatever 10 this is than a piece of paper or a website. And, 11 yeah, it's just not possible for me to opine.</p> <p>12 Q. Is being presented with this document a 13 sufficient motivator for the Attorney General to look 14 into Aristotle or any of these other entities?</p> <p>15 MS. LECOCQ: Objection.</p> <p>16 A. I can say that the Attorney General's 17 Office takes its responsibility in upholding state 18 law seriously. And actions that we may take, you 19 know, are dependent upon what information that we 20 have. And with something like this, where there is 21 another state agency implicated, it necessarily needs 22 to involve them.</p> <p>23 So I could say generally that it's 24 something that the office takes note of, and is 25 mindful of, and we'll certainly consider moving</p>	<p style="text-align: right;">Page 181</p> <p>1 entity's names.</p> <p>2 Q. Has the Attorney General's Office had any 3 contact with Aristotle, let's say, in the last two 4 years?</p> <p>5 A. Not that I'm aware of. And, you know, that 6 wasn't part of any review or research I did in 7 preparation for today.</p> <p>8 (Exhibit 17 marked.)</p> <p>9 Q. I'm handing you what's been marked as 10 Exhibit 17. Have you seen this document or some 11 iteration of this document before?</p> <p>12 A. Yes.</p> <p>13 Q. And what is this?</p> <p>14 A. This is a draft of House Bill 4, introduced 15 during this legislative session, 2023.</p> <p>16 Q. Has the Attorney General's Office -- I 17 don't want privileged information here -- but has the 18 Attorney General's Office been involved in drafting 19 this proposed amendment?</p> <p>20 A. Not that I'm aware of, no.</p> <p>21 Q. Did the Attorney General's Office make any 22 suggestions regarding the proposed amendments to 23 Sections 1-4-5.5 and 1-4-5.6?</p> <p>24 A. Not other than our normal process of 25 providing fiscal impact reports through the</p>

<p style="text-align: right;">Page 182</p> <p>1 legislative session, which we do -- at this count 2 it's about 560 different bills. So this is one of 3 560 that have come into our office in the past 51 4 days.</p> <p>5 Q. Does the Attorney General's Office have an 6 understanding of what House Bill 4 proposes to change 7 with regard to -- let's say specifically Sections 8 1-4-5.5 and 5.6?</p> <p>9 A. I'm sorry, can you ask that question again?</p> <p>10 Q. Sure. Does the Attorney General's Office 11 have an understanding of what this bill proposes with 12 regard to 5.5 and 5.6?</p> <p>13 A. So the office, generally -- the volume -- 14 and I have to put context into this, because it 15 affects the way I answer and explain -- answer your 16 question and explain bill analyses -- our office -- 17 right now, I'm overseeing the bill analysis for our 18 office, which includes requests from the Legislative 19 Finance Committee analysts -- which there is a number 20 of them, and they request fiscal impact reports -- 21 which aren't just fiscal impact -- it's also any 22 types of issues. And they ask them often of many 23 agencies for every bill, amendments, and 24 substitutions. Not all, but many. My estimate is 25 that we get about 75 percent of the bills introduced</p>	<p style="text-align: right;">Page 184</p> <p>1 I know that's a long answer. I hope that 2 helps put it in context.</p> <p>3 Q. Does the Attorney General's Office support 4 the proposed amendments to 5.5 and 5.6?</p> <p>5 MS. LECOCQ: If you want to declare -- I 6 don't know if you want me to show him where they are 7 in this bill? Because it's a huge bill.</p> <p>8 MR. MUELLER: I mean, we're on page 4 and 5 9 of this document.</p> <p>10 MS. LECOCQ: Okay.</p> <p>11 Q. Page 4 starts with 1-4-5.5.</p> <p>12 A. Excuse me, what page is it?</p> <p>13 Q. Page 4.</p> <p>14 A. Page 4. Would you like me to answer the 15 question?</p> <p>16 Q. Yes.</p> <p>17 A. So I'm not aware of our office taking a 18 formal position publicly in support of this. I can 19 say, generally, this helps address the issue, and 20 we'd be supportive of, because it helps clarify -- 21 just like dozens of other bills in the session, they 22 help to clarify terms that are not always clear; they 23 might be ambiguous and conflicting.</p> <p>24 Q. Does the Attorney General have any 25 understanding as to whether these proposed amendments</p>
<p style="text-align: right;">Page 183</p> <p>1 with a request for a fiscal impact report to our 2 office.</p> <p>3 And so, by the time we receive a request, 4 we have 24 hours, generally, to return the fiscal 5 impact. They're assigned to, I think, about 40 6 attorneys throughout the office, based off of some 7 subject matter, experience; sometimes, it's 8 completely random, too. And the attorney then has 18 9 hours to complete the analysis, submit it. And it 10 usually goes through one, sometimes two, reviews 11 before being released back to the Legislative Finance 12 Committee.</p> <p>13 So our office being aware of a bill, these 14 attorneys and someone who reviews it will generally 15 be aware of it. But the time constraints on our 16 office's ability, you know, to get into the weeds on 17 bills, there aren't many that I can say the office, 18 as an entity, is familiar with. Some attorneys that 19 do the fiscal impact reports are aware of it.</p> <p>20 But, can I say that the Attorney General, 21 or even the executive team, understands all the 22 details of every single bill? No, they don't. It's 23 not possible, literally possible, for that to happen, 24 given that we receive over 100 of these a week, on 25 top of everyone's normal workload.</p>	<p style="text-align: right;">Page 185</p> <p>1 were motivated, in whole or in part, by VRF's 2 lawsuit?</p> <p>3 A. I'm not aware of that. That might be a 4 better question for the Secretary of State, because 5 they're the subject matter expert in these statutes 6 that are being amended.</p> <p>7 Q. Okay. If we look at the proposed amendment 8 to 5.5 C -- which is the second to the last paragraph 9 on page 4 -- I'm just going to read through this and 10 annotate as I go. So C says, "Each requester of 11 voter data, mailing labels or special voter lists 12 shall sign an affidavit that the voter data, mailing 13 lists, or special voter lists shall sign an affidavit 14 that the voter data, mailing lists shall be used for 15 governmental or" -- and then this amendment proposes 16 to remove "election and." The original has "election 17 campaign purposes only." This amendment would add, 18 "shall not be transferred, copied, shared or conveyed 19 to any person outside the requesting party's agency 20 or organization, shall not be made accessible by the 21 general public on the internet or through other 22 means." And then the original has "and shall not be 23 made available for use for unlawful purposes."</p> <p>24 Did I fairly characterize that?</p> <p>25 A. Yes.</p>

<p style="text-align: center;">Page 186</p> <p>1 Q. If New Mexico law already prohibits posting 2 voter data on the internet, why is this amendment 3 necessary?</p> <p>4 MS. LECOCQ: Objection.</p> <p>5 A. Yeah, I can't speak to the intent of the 6 sponsors, the legislators. That would be a question 7 for a member of the legislature.</p> <p>8 But I will just say -- and I mentioned this 9 before -- that there are many statutes that need 10 housekeeping. And some of that -- you know, terms 11 that are insistent, terms that are duplicative, terms 12 that aren't defined. And I see this as addressing an 13 issue that -- you know, obviously we're arguing over 14 these terms, and this would clarify, to help avoid 15 that ambiguity, and better clarify the requirements 16 of the statute.</p> <p>17 Q. Okay. I want to then turn your 18 attention -- if you look at the bottom of page 5, it 19 begins the amendments to Section 1-4-5.6.</p> <p>20 And in the definition of "Unlawful use of 21 voter data, mailing labels, or special voter lists, 22 consists of -- this is Subsection A -- it says, "the 23 knowing and willful." The amendment purports to 24 strike the words "use of such information for 25 purposes prohibited by the Voter Records System Act,"</p>	<p style="text-align: center;">Page 188</p> <p>1 identifies, or that could be used to identify, a 2 specific voter or the voter's name, mailing or 3 residential address to be made publicly available on 4 the internet or through other means."</p> <p>5 Did I read that section correctly?</p> <p>6 A. Yes.</p> <p>7 Q. Does the Attorney General agree that 8 violations of these provisions both, as they are 9 currently written, and as would be amended, are 10 crimes under New Mexico law?</p> <p>11 MS. LECOCQ: Objection.</p> <p>12 A. I mean, our office hasn't taken a position 13 on these proposed -- that I'm -- the fiscal impact 14 reports they include a note that they're not formal 15 positions of our office. But, I mean, these are in 16 the same section as, you know, describing the fourth 17 degree felonies. So I think that can be presumed. 18 But our office hasn't taken any kind of formal 19 position on it.</p> <p>20 Q. You'll agree with me that lines 12 through 21 17 do say that the unlawful use of voter data is a 22 fourth degree felony; and upon conviction, the 23 violator shall be fined \$100 for each line of the 24 information that was unlawfully used?</p> <p>25 A. Yeah, I mean, that's where my conclusion</p>
<p style="text-align: center;">Page 187</p> <p>1 and to add: "Selling, loaning, providing access to 2 or otherwise surrendering of voter data, mailing 3 labels or special voter lists by a person for 4 purposes prohibited by the Election Code."</p> <p>5 Did I fairly characterize that section?</p> <p>6 A. Yes.</p> <p>7 Q. Does that language that this would add on 8 lines 2 to 4 of page 6 sound familiar to you?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. I mean, have I read that word for word? I 11 can't -- I don't know if I have or not. I mean, some 12 of those points I know we're addressing here.</p> <p>13 Q. I think you have a copy of 1-5-22 in front 14 of you, if you need to refresh your recollection on 15 this. But I'll ask: Is that the same language 16 that's currently in Section 1-5-22?</p> <p>17 A. I'll say yes.</p> <p>18 Q. I'm going to move -- sorry, if you want a 19 chance to --</p> <p>20 A. No, no, that's fine, go ahead.</p> <p>21 Q. I just want to move to line 6 on page 6. 22 There is a (2) in parentheses that says -- this is an 23 addition from the amendment, "causing voter data, 24 mailing labels or special voter lists or any part of 25 the voter data, mailing labels or special lists that</p>	<p style="text-align: center;">Page 189</p> <p>1 comes from.</p> <p>2 Q. So there is a criminal penalty there for 3 someone that violates that statute, both as written, 4 as it would be written if this amendment passes?</p> <p>5 A. Yes.</p> <p>6 Q. I just want to go back to 1-4-5.5 that we 7 just looked at, on page 4. Is a violation of 1-4-5.5 8 a crime?</p> <p>9 MS. LECOCQ: Objection.</p> <p>10 A. I know that this is being -- this is part 11 of the issue that's being raised on appeal, and I 12 believe that our office has taken a position that it 13 is or could be. And I think that can be resolved by 14 the court, if there was a determination by the court.</p> <p>15 MR. MUELLER: Okay. I would like to 16 propose a four-minute break. I'm going to talk with 17 Jackson real quick, see if we have anything to clean 18 up. And if not, we'll be done.</p> <p>19 MS. LECOCQ: Great. We'll just step out. 20 (A discussion was held off the record.)</p> <p>21 MR. MUELLER: Okay. We can go back on the 22 record. And if Erin agrees, I would like to ask a 23 question about the document that you gave me. And we 24 can do it --</p> <p>25 MS. LECOCQ: Under Attorneys' eyes.</p>

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6 I FURTHER CERTIFY that copies of this Certificate
7 have been mailed or delivered to all Counsel,
8 and parties to the proceedings not represented
by counsel, appearing at the taking of the
Deposition.

I FURTHER CERTIFY that examination of this transcript and signature of the witness was required by the witness and all parties present. On _____ a letter was mailed or delivered Ms. Erin Lecocq regarding obtaining signature of the witness, and corrections, if any, were appended to the original and each copy of the Deposition.

Page 196

1 VOTER REFERENCE v. RAUL TORREZ, et al.
2 WITNESS SIGNATURE/CORRECTION PAGE
3 If there are any typographical errors to your
deposition, indicate them below:

5 PAGE LINE

6 _____ Change to _____
7 _____ Change to _____
8 _____ Change to _____
9 _____ Change to _____

10 Any other changes to your deposition are to be listed
11 below with a statement as to the reason for such
change.

PAGE	LINE	CORRECTION	REASON FOR CHANGE
------	------	------------	-------------------

13

14

17

18

I, JOSEPH DWORAK, do hereby certify that I have read

20 the foregoing pages of my testimony as
transcribed and that the same is a true and
correct transcript of the testimony given by me
21 in this deposition on March 13, 2023, except for
the changes made.

23 JOSEPH DWORAK
24 (8018N) JB

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I FURTHER CERTIFY that the recoverable cost of the original and one copy of the Deposition, including exhibits, to MR. MATT MUELLER is \$ _____.

4 I FURTHER CERTIFY that I did administer the oath to
5 the witness herein prior to the taking of this
6 Deposition; that I did thereafter report in
7 stenographic shorthand the questions and answers
set forth herein, and the foregoing is a true
and correct transcript of the proceeding had
upon the taking of this Deposition to the best
of my ability.

I FURTHER CERTIFY that I am neither employed by nor related to nor contracted with (unless excepted by the rules) any of the parties or attorneys in this case, and that I have no interest whatsoever in the final disposition of this case in any court.

Jennifer Bean, FAPR, RMR, RDR, CRR
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NM Certified Court Reporter #94
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(8018N) JB
Date taken: March 13, 2023
Proofread by: LR

Greg Rockstroh March 20, 2023		Defendants' Objections	Plaintiff's Response
4:23	5:4		
6:24	9:24		
10:18	11:15		
12:3	12:7		
14:6	14:12		
15:2	15:4		
16:5	16:7		
17:8	17:10		
18:7	18:9		
19:12	19:15		
20:10	20:13		
21:3	21:6	Relevance: There is no dispute in this case regarding the feasibility of producing the data nor about the costs associated with doing so.	This testimony concerns the process the Secretary of State's office must go through to create reports in the SERVIS database, which is relevant to show that Defendants' reasoning for denying VRF's requests for New Mexico voter data are pretextual. Specifically, this testimony illustrates that the Secretary of State's office is capable of creating the requested reports and will incur no special fees or other hardships associated with creating the reports. Accordingly, there is no basis to deny VRF's request.
21:10	21:17		
21:18	21:23		
24:1	24:2		
24:11	24:18		
26:2	26:7		
27:17	27:25		
31:2	31:8		
31:13	31:16		
32:4	32:7		
34:13	36:14		
38:18	39:23		
39:24	40:11		
40:12	40:25		



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Litigation Services

Greg Rockstroh

March 20, 2023

Voter Reference Foundation, LLC

vs.

Raul Torrez, et al.

1 (Witness sworn.)

2 MS. SCHREMMER: Sorry to interrupt here.

3 I just wanted to -- hold on. I need to mute my
4 mic here. We're in the same room. I just
5 wanted to get some clarity. You mentioned the
6 videographer. Are we recording this
7 deposition?

8 MR. GREIM: No, we're not. It just shows
9 up on my screen as videographer, but it's just
10 the person running the call. We're not
11 recording it.

12 MR. HOLMES: I was getting ready to hop
13 off the line as we speak. I was just waiting
14 until you guys get started and settled in.

15 MS. SCHREMMER: Okay. Thank you for the
16 clarification. I'm going to mute this mic.

17 GREGORY ROCKSTROH,
18 having been first duly sworn to tell the truth,
19 the whole truth, and nothing but the truth,
20 testified as follows:

21 DIRECT EXAMINATION,

22 QUESTIONS BY MR. EDWARD D. GREIM:

23 Q. All right. Well, this is to the witness.

24 Could you please state for us your full name

25 and your address?

1 **A. Gregory James Rockstroh, 420-A Old Las Vegas**

2 **Highway, Santa Fe, New Mexico, 87505.**

3 Q. Okay. And your last name is spelled

4 R-O-C-K-S-T-R-O-H?

5 **A. Correct.**

6 Q. Very good. Well, my name is Eddie Greim, and
7 I'll be asking you questions for a pretty short
8 time today here. I think we'll go probably
9 about 60 minutes. If we go over, it will be
10 only a few minutes beyond that, okay?

11 **A. Sure thing.**

12 Q. Mr. Rockstroh, have you had your deposition
13 taken before?

14 **A. No, I have not.**

15 Q. Okay. Well, just, I'll do some ground rules
16 with you here. I'll ask you a question, and
17 I'll just ask you to make sure you understood
18 it, and then I'll ask for an answer. It's a
19 little tricky when it's remote. And so I want
20 you to tell me right away if you didn't hear it
21 correctly or didn't understand it. Is that
22 fair?

23 **A. That is, yes.**

24 Q. Okay. And this goes for all depositions, but
25 especially when we do it remotely, you'll need

1 to answer every question with a yes or a no for
2 the court reporter. Okay?

3 **A. Yes.**

4 Q. Okay. Every now and then Mr. Herrera there,
5 who is defending the deposition, may make an
6 objection of some kind. And if he does that, I
7 may go back and I may re-ask the question,
8 because it may be that he's identified a flaw
9 in the way I've asked it where when we print it
10 out it's not going to be clear, you know, what
11 question it is you were answering. And so if
12 he objects, I may go back and I may ask it, but
13 I very likely will just turn to you and say,
14 "I'd like to have an answer, please," and then
15 you'll just need to answer. Does that make
16 sense?

17 **A. Yes.**

18 Q. Okay. Now, he may, every now and then, you
19 know, make an objection and say attorney-client
20 privilege and instruct you not to answer.
21 We'll deal with that at the time. But I --
22 given our subject matter today, I doubt we're
23 going to get there. We'll see.

24 Okay. Well, with that aside, let's
25 charge into this. Could you tell us your

1 education?

2 A. Yes. I have a bachelor's in business

3 administration from the College of Santa Fe.

4 Q. Okay. What training do you have in information

5 technology?

6 A. My business administration degree was a

7 specialty in management of information

8 systems, and I've worked in technology since

9 1998.

10 Q. Since that time, have you received any other

11 training or certificates in information

12 systems?

13 A. I've not received -- I've not earned any

14 certificates in the recent past. They would

15 all predate my degree, which was 2007.

16 Q. Okay. Tell us -- let's just go from 2007 to

17 the present, just tell us your work history.

18 A. Sure. In 2007 I was hired by the Department of

19 Information Technology as an application

20 developer III, I think. I worked there for

21 approximately 18 months. I then was hired at

22 the New Mexico Aging and Long-Term Services

23 Department as a business analyst. I helped

24 implement a case management, and then moved

25 progressively through the ranks at the Aging

1 **and Long-Term Services Department. Ultimately**
2 **I served there for a relatively short time as**
3 **chief information officer.**

4 **And then in 2015 I came over to the**
5 **secretary of state again as an application**
6 **developer. Worked predominately as business**
7 **analyst and project manager, and then became --**
8 **I was -- became the chief information officer**
9 **acting, when the chief information officer left**
10 **in August of, I think, 2019. And I've -- and**
11 **was subsequently hired permanently in that role**
12 **in that 2021. So my date might be off. I**
13 **think it was August of 2020, I apologize.**

14 Q. Who -- how many people report to you as the CIO
15 in the SOS's office?

16 A. **My direct reports are currently four.**

17 Q. Okay. And are there other people under them,
18 or do you have a total of four plus yourself in
19 your department?

20 A. **The department is ten people total. I have a**
21 **deputy, and anybody who does not report to me**
22 **reports to the deputy chief information**
23 **officer.**

24 Q. I don't have this as an exhibit, but we found a
25 Facebook post from the official secretary of

1 state Facebook account that identifies you as
2 the "Election Security Program Manager." Does
3 that name ring a bell to you?

4 A. Yes, sir.

5 Q. Okay. Are you still the election security
6 program manager today?

7 A. No, I am not.

8 Q. Okay. When did you serve in that role?

9 A. I served in that role from 2018 until I was
10 named as the acting CIO in approximately August
11 of 2020.

12 Q. What were your duties as the election security
13 program manager?

14 A. That it was -- it was an expansion position
15 created from -- it was created in reaction to
16 the election activities that had gone on in
17 2016 and 2018. And the goals of it were
18 largely to stay abreast of federal resources
19 that were available and state resources that
20 were available in the fields of cyber security,
21 and to make those available to county offices
22 where elections are run. And to same -- to
23 similar extent, to stay on top of cyber
24 security at the secretary of state.

25 Q. Let me ask you, Mr. Rockstroh, did you take

1 some time to prepare for your deposition today?

2 A. Minimal. You know, a minimal amount of time,
3 yes.

4 Q. Okay. Was that today or last week sometime?

5 A. Last Friday, I believe, and then a shorter
6 amount today just in reference to some exhibits
7 that were received.

8 Q. Very good. And we'll turn to those in just a
9 couple of minutes here. Did you review
10 anything other than the exhibits that we sent
11 ahead in preparation for your deposition today?

12 A. No.

13 Q. And I'm not going to count your attorneys
14 within this question, but did you interview
15 anyone or talk to anyone to prepare for your
16 deposition?

17 A. No.

18 Q. Are you familiar with a New Mexico, and I'm
19 not -- I may have not use the exact term here.
20 But are you familiar with a database maintained
21 by New Mexico that contains voter registration
22 data?

23 A. Yes.

24 Q. Is there a particular name or acronym for
25 database?

1 **A. Yes.**

2 Q. What is it?

3 **A. SERVIAS, S-E-R-V-I-A-S.**

4 Q. Okay. And I'm just going to talk about the

5 architecture here for a second. And

6 that's a -- by the way, that's a term I barely

7 know the meaning of. But I'm just going to ask

8 you, first of all, is there a particular server

9 where the data in SERVIAS is housed?

10 **A. Can you clarify "data"?**

11 Q. Well, let's back up. Let's -- maybe you should

12 tell us what data is in SERVIAS.

13 **A. SERVIAS consists of discrete files that are**

14 **stored, mostly PDF-type images, and then also**

15 **more traditional database.**

16 Q. And where does the information in the database

17 come from? How does it get there?

18 **A. When you say how does the data get there, what**

19 **are you -- I mean, what are you asking, I**

20 **guess?**

21 Q. Let me -- okay. Let me ask you a different

22 question. What are the sources of the data in

23 the database? Let's start with that.

24 **A. The sources of the data in the database,**

25 **there's manual entry by secretary of state**

1 personnel, as well as county personnel.
2 There -- and that's the predominant -- that's
3 predominant data entry. The system receives
4 voter registrations from motor vehicles
5 division, and it also receives voter
6 registrations from the secretary of state's
7 online voter registration system.

8 Q. Okay. And so if a voter -- I'm just going to
9 take one of those. Let's start with the
10 secretary of state online system. If a voter
11 registers using the online system, does the
12 data automatically populate in the database or
13 is manual data entry still required?

14 A. The data is automatically transferred into the
15 database for SERVIAS. From there, it has to be
16 processed by a county election official,
17 otherwise it just hangs around in an input cue.

18 Q. Is the same thing true of the DMV data, does
19 that come in automatically but then have to be
20 processed by somebody else?

21 A. That is correct.

22 Q. And, again, is it the county election official
23 who processes the data to make it part of the
24 database?

25 A. That is correct, yes.

1 Q. And if any changes are made as a result -- I'm
2 sorry, if any changes to the SERVIAS database
3 are made as a result of the ERIC reports, those
4 are made by the county clerks, right?

5 A. Yes.

6 Q. Now, I understand that -- well, let me ask you
7 this: Does the SERVIAS database also reflect
8 data showing when a voter has cast a vote in an
9 election?

10 A. Yes.

11 Q. And I understand that's called a credit?

12 A. Yes, or voter credit.

13 Q. Okay. How does the voter credit get added to
14 the database?

15 A. Voter credit can come from manual entry,
16 typically by a county clerk. It can also come
17 from data exchange where the system interacts
18 with a ballot-on-demand system that is
19 provided -- operated by the county election
20 officials.

21 Q. So let me go back -- now that we have a little
22 better sense of what the data is in -- in there
23 and how it gets added, let me ask you: Where
24 is the data stored? Or let me -- let me strike
25 that.

1 Where is the database hosted?

2 **A. The database is hosted in the state data center**

3 **on a server owned by the secretary of state,**

4 **owned and operated.**

5 Q. What are your responsibilities -- and let me

6 back up.

7 What are the responsibilities of your
8 office with respect to the maintenance of the
9 SERVIAS database?

10 **A. I understand more from the technical aspect,
11 the maintenance and upkeep requirements for the
12 systems in a more general sense at the office
13 level. I don't have a great deal of
14 interactions or -- I've got an understanding,
15 but not a great deal of interaction or
16 influence on that, if that makes sense.**

17 Q. Sure. I mean, let's drill down. I'm not going
18 to go too deep into this. But you mentioned
19 there are some technical aspects to your work
20 with the database. Could you tell us what
21 those are?

22 **A. Yes, sir. You know, the IT division is
23 responsible for ongoing contract maintenance
24 with the support vendor, that we grant access
25 to the hosting infrastructure to the IT staff,**

1 **we're responsible for the backup, monitoring,**
2 **and protection of those -- of those systems.**

3 Q. Okay. Let me ask you now: Do you occasionally
4 have to pull reports from the database?

5 A. **My staff do pull reports that are not easily**
6 **available in the front end as requested by the**
7 **Bureau of Elections.**

8 Q. What do you mean that they're not easily
9 available in the front end? What did you --
10 I'm sure there's some technical answer there,
11 but tell us, if you can.

12 A. **That SERVIAS has reporting features built into**
13 **it that occasionally we get questions for**
14 **system data that isn't fulfilled by -- that's**
15 **not fulfilled by the canned reporting that is**
16 **available within SERVIAS, and then we will**
17 **attempt to answer those questions directly from**
18 **the back end.**

19 Q. So can you give me an example of a canned
20 report that's available from SERVIAS?

21 A. **Yes. There is a precinct parts and district**
22 **report that would describe the districts -- the**
23 **election districts within a specific county,**
24 **and then the precinct parts that are associated**
25 **with each of those districts.**

1 Q. Okay. Let me ask you -- and I assume that
2 there are several -- you could give us several
3 other examples like that of canned products
4 that can be easily pulled from SERVIAS?

5 A. Yes.

6 Q. Now, if somebody wants one of those canned
7 products, how is it accessed?

8 A. Those products would normally come through
9 voter data requests or an inspection of public
10 records request.

11 Q. Okay. And then does -- I assume that that
12 request comes to someone within the secretary
13 of state's office, is that right?

14 A. Yes.

15 Q. And does that -- is that person a staffer who
16 reports to you?

17 A. No.

18 Q. Okay. Somebody within the Bureau of Elections?

19 A. Yes.

20 Q. And do those individuals, then, have the
21 ability to directly access SERVIAS and pull
22 those canned products on their own?

23 A. Yes.

24 Q. They don't need to go to your staff, normally,
25 to pull those canned products off, right?

1 **A. Yes.**

2 Q. What if someone asked for a voter list or a
3 list of all, you know, registered voters for a
4 certain county, is that a canned product?

5 **A. Yes.**

6 Q. About how many canned products are there?

7 **A. I'm going to guess here a little bit, but I**
8 **would say there are between 30 and 40 different**
9 **canned reports in the system.**

10 Q. Who decided what reports would be canned? I
11 mean, in other words, who came up with the idea
12 for those 30 or 40 reports?

13 **A. Some of -- some of the reports came as just**
14 **part of the system from the vendor, you know,**
15 **so a vendor when they build a system make best**
16 **guess as to, you know -- and they're good**
17 **guesses; they work in the space. But they make**
18 **best guess. And then the office, in**
19 **conjunction with county clerks, would have**
20 **specified other things that were not -- that**
21 **they wanted on a regular basis but were not**
22 **included in an already covered easily by a**
23 **canned report.**

24 Q. Now, does the secretary of state's office,
25 under its contract with the vendor, pay a

1 certain charge for each report that is pulled
2 off of the canned reports?

3 **A. No.**

4 Q. So are the canned reports covered, I guess,
5 under a fixed fee under that contract?

6 **A. I think I would describe it as just the license
7 fee for the software.**

8 Q. Okay. Now, I take it that there are other
9 reports -- and we may come back to this. I
10 think we may be done with the idea of canned
11 reports.

12 I take it there are other ways to pull
13 data off the SERVIAS database that are not
14 simply choosing a canned report, right?

15 **A. Correct, yes.**

16 Q. And can you give me an example? I know you may
17 have to be creative, but maybe you can actually
18 remember an example of a request that -- for
19 data, that was recently made that was not a
20 canned report. Can you think of one?

21 MR. HERRERA: Objection.

22 **A. So the question is just an example of a type of
23 report that might need to be pulled from other
24 means?**

25 BY MR. GREIM:

1 Q. Right.

2 A. **Recently we pulled -- we pulled a report**
3 **regarding MVD, motor vehicles division,**
4 **registrations that were -- it was a -- it was a**
5 **custom report regarding MVD and whether or not**
6 **a customer chose to register to vote at the MVD**
7 **office.**

8 Q. So let me just -- we'll both -- take us a
9 little bit further. It's not that important,
10 but I want to understand. So somewhere within
11 the SERVIAS database, it tells you how that
12 person registered, is that right?

13 A. **Yes.**

14 Q. And it probably tells you when they registered,
15 too, correct?

16 A. **Yes.**

17 Q. And so someone asks you to pull a report of
18 everyone who registered within a certain time
19 frame, how many of those were registrations
20 through the MVD offices?

21 A. **It's close.**

22 Q. Okay.

23 A. **But, yes, that would be a good example as well.**

24 Q. Now, do you -- does the secretary of state's --
25 let's use the example I gave. I guess it

1 wasn't -- I didn't quite meet your example, but
2 it qualifies, so we'll stick with that.

3 Would the secretary of state's office
4 incur a special charge from the vendor for
5 having that data pulled?

6 **A. No -- no.**

7 Q. Okay. Who -- let me ask you this: Who goes in
8 to pull the data when there is a special
9 request like that?

10 **A. Our SOS application developer would be the**
11 **first point, and if he's unable to figure it**
12 **out, he would escalate it to the support vendor**
13 **for assistance.**

14 Q. Does the support vendor at least charge you an
15 hourly rate or something for those kind of
16 requests?

17 **A. Not -- no.**

18 Q. Are there ever voter requests for data -- or
19 let me just say: Are there ever requests for
20 voter data that come from the general public
21 that the secretary of state's office refuses
22 because they require too much data work?

23 **A. To the best of my knowledge, no.**

24 Q. Let me step away from this topic for a minute
25 because there's something I forgot to ask you.

1 **A. The system does not have any -- the system**

2 **keeps data for eternity right now.**

3 Q. What about if somebody dies, are they also kept
4 in there? I mean, I know they're not being
5 kept as an active voter. But if someone dies,
6 are they kept in there along with a column
7 showing that they -- on such and such a date
8 their record was changed to show that they were
9 dead?

10 **A. Yes.**

11 Q. Okay. I'm going to ask you about a -- I'm
12 going to ask you about something called a file
13 maintenance list. Have you heard that term
14 before?

15 **A. Yes.**

16 Q. What do you understand that to mean?

17 **A. My understanding is that is a canned report**
18 **used by county staff.**

19 Q. What does the report reflect?

20 **A. Without the report, I couldn't really comment,**
21 **other than generalities.**

22 Q. Okay. Well, let's stick with generalities. I
23 don't -- I'm not here to drill down all the
24 way. We'll just find out some other way. But
25 generally speaking, is it a list that shows

1 BY MR. GREIM:

2 Q. To the voter record, okay.

3 It doesn't just keep track of the very

4 last one? It goes back in time to show other

5 changes that were made?

6 MR. HERRERA: Objection.

7 A. Yes.

8 BY MR. GREIM:

9 Q. How often is it that your staff is called upon
10 to generate what -- I'm just going call it a
11 non-canned report, pursuant to a request that's
12 made?

13 A. Again, a guesstimate, and it depends on --
14 tends to be cyclical around elections, but I
15 would say monthly.

16 Q. About once a month on average?

17 A. Yes.

18 Q. And when one of those requests comes in, I
19 mean, I know they're all different, but how
20 long does it take someone from your staff to
21 work on that and pull the data?

22 A. Often I would say several days.

23 Q. And there -- now, I'm not a computer science
24 person at all, but I assume they're writing
25 code or something like that?

1 A. Correct, yes.

2 Q. Now, is that several days of just working
3 straight through or it might take several days
4 from the time they get the assignment to the
5 time it's completed?

6 A. From a receipt of assignment until completed.

7 Q. But maybe they're working on other projects at
8 the same time, it's not that that matter took,
9 say, 40 hours on average?

10 A. Correct.

11 (WHEREUPON, Deposition Exhibit 1 was
12 marked for identification.)

13 BY MR. GREIM:

14 Q. I'm going to have you, if you could, look at
15 Exhibit 1. And if you have it like I have it,
16 it's on letter-sized paper and so the printing
17 is rather small.

18 A. Yes.

19 Q. Okay. Now, this was produced to us by the
20 secretary of state's office. Do you know who
21 prepared this report within the secretary of
22 state's office?

23 A. I do not.

24 Q. And have you seen a report like this before you
25 looked at this document in preparation for the

1 **they could review the reporting tools.**

2 Q. I see. So let's break away for a second. I
3 want to ask you about that. It sounds like
4 there's an interface for SERVIAS after you log
5 in and there's probably certain things you can
6 click to generate the canned reports, is that
7 right?

8 A. **Yes.**

9 Q. And the application then goes into the database
10 and pulls out the data using that formula to
11 generate the canned report, is that right?

12 A. **Yes.**

13 Q. That report doesn't already exist. It's just
14 that there is a system in place for pulling
15 that particular data together, right?

16 A. **Yes.**

17 Q. Okay. Final question and then we'll quit --
18 you know, we'll quit trying here. But if you
19 go down to the table section still on the first
20 page, fourth from the bottom is Judith Gordon,
21 February 24, 2021, you'll see she wanted voter
22 data for Sandoval County, precinct 132, with
23 history for general primary municipal elections
24 2016 to 2020. Is that a canned report?

25 A. **With data -- with history, yes.**

1 Q. Okay.

2 A. Produced from similar -- you set it up a little
3 bit and it hit go.

4 Q. So when you say you "set it up a little bit,"
5 you maybe enter in ranges and things into the
6 SERVIAS interface?

7 A. Yes.

8 MS. SCHREMMER: Hey, Eddie?

9 MR. GREIM: Yeah.

10 MS. SCHREMMER: When you're done with
11 this exhibit, can we take a comfort break?

12 MR. GREIM: Yeah. Why don't we go ahead
13 and do it right now?

14 MS. SCHREMMER: Okay, thanks.

15 MR. GREIM: Okay. We'll go off the
16 record for about ten minutes, come back on, and
17 I expect we have about 30 minutes left at the
18 very most.

19 (WHEREUPON, at this time a brief recess
20 was taken.)

21 MR. HERRERA: Eddie, Greg has a
22 clarification from his previous testimony he
23 wants to clear up.

24 MR. GREIM: Okay.

25 THE WITNESS: In our last example, we

1 BY MR. GREIM:

2 Q. Okay. And so your testimony, then, is that
3 what Ms. Gordon asked for technically could not
4 be provided?

5 THE WITNESS: Can I see --

6 MS. SCHREMMER: Oh, I'm sorry.

7 A. **As asked, it can be provided by the system.**

8 BY MR. GREIM:

9 Q. It can be?

10 A. **Yes.**

11 Q. Okay. And so is it a canned report?

12 A. **Yes.**

13 Q. So the fact that, you know, this was asked for
14 in February of '21, and by this time there
15 might be people who have gone to jail or
16 whatever since 2016, did not keep the secretary
17 of state from responding to the report -- to
18 the request, right?

19 A. **It says it was issued on February 24th of 2021,
20 so, yes.**

21 Q. Right. Okay. Let me stay with you on this a
22 little bit. The people who voted in 2016, in
23 the general primary municipal elections in
24 2016, who may have left Sandoval County by
25 2021, would still actually be in the database,

1 right?

2 A. Yes.

3 Q. But if they left Sandoval County, their current
4 status might show as what, inactive?

5 A. No, their status would still be active. It
6 would just be in a different county and they
7 would not reflect on this report. So if I
8 lived in precinct 132 in Sandoval County and I
9 voted in the 2016 -- any of those elections,
10 and then I moved to Santa Fe and you run
11 this -- and you ask us to run this report in
12 2021, I would not be reflected in that canned
13 report as a participant from precinct 132 in
14 that election because I don't live in precinct
15 132 any longer.

16 Q. But the database still shows -- even though not
17 as your current address, it still shows your
18 Sandoval County address, correct? It's still
19 in there somewhere?

20 A. Yes.

21 Q. It's just that the way the canned report is set
22 up, it's going to begin with your current
23 county of registration?

24 A. Yes.

25 Q. Now, couldn't a query be run for every person

1 showing a Sandoval County registered address in
2 the 2016 elections?

3 **A. Not from a canned perspective.**

4 Q. Right. It would require somebody on your staff
5 maybe talking to the vendor to pull that data
6 into a special report?

7 **A. Yes.**

8 Q. And have you ever received a request like that
9 before?

10 **A. Yes.**

11 Q. Okay. When was that?

12 **A. I don't recall.**

13 Q. In the last five years?

14 **A. Yes.**

15 Q. Do you know who made the request?

16 **A. No.**

17 Q. Do you recall how long it took to fulfill the
18 request?

19 **A. No. It would be a complicated -- it would be**
20 **one that took somewhat longer.**

21 Q. Was there an extra charge levied on the
22 recipient or, I guess, the requester?

23 **A. I don't know.**

24 Q. Would there still be a record of that request
25 and the time it took to send them the data?

1 end, you'd see that I signed it. It's a
2 request for data and a notice of violation of
3 the National Voter Registration Act. It's
4 dated May 27, 2022. And I take it you've seen
5 this before just now, because you at least
6 maybe saw it before our deposition today?

7 **A. Yes.**

8 Q. Had you seen it before then?

9 **A. No, today is the first I'd ever seen it.**

10 Q. Okay. Well, let's turn to page 4. And I'm
11 going to show you -- there are two requests on
12 the top of page 4. And I want to focus on the
13 first one, which is little bit longer. And I
14 just want you to see in writing, I'll read it
15 into the record, but you would forget it
16 quickly, so I think having it in front of you
17 will help as I ask you about it.

18 The request is for, and I'm going to
19 quote, "A complete list, by county/precinct, of
20 any registered voters who cast a ballot in the
21 November 3, 2020 general election, who have
22 been subsequently placed in an inactive,
23 canceled, deleted, removed (or any registration
24 status other than active) status," then it has
25 a comma, and says, "or any voter that has been

1 removed or deleted from the voter roles between
2 November 3, 2020 and April 13, 2021, including
3 the total counts of the same."

4 So that's what I'm going to ask you about
5 now. This was the request that I actually sent
6 in about -- you know, almost a year ago. So I
7 think, you know, the structure of this request
8 is sort of divided in half. After the word
9 "status" in the middle, it switches over to
10 something else. So I'm going to focus on the
11 first part of the request and then we'll expand
12 out, okay?

13 **A. Okay.**

14 Q. So the first part of the request probably can
15 be viewed in two different -- has two different
16 parts as well. You'll see the very first part
17 wants to know a complete list, by
18 county/precinct, of any registered voters who
19 cast a ballot in the last general election. So
20 if we stop right there -- I know there's more,
21 but if we stop right there, is that a canned
22 report?

23 **A. Yes.**

24 Q. But then, of course, it goes on. You can't
25 just stop with the canned report. It says,

1 "...of those people who have been subsequently
2 placed in an inactive, canceled, deleted,
3 removed (or anything other than active)
4 status."

5 And so my question is: With that
6 addition, is it still a canned report?

7 **A. I'm not sure. I would need to look at the**
8 **system.**

9 Q. Is it a report that, even if not canned, could
10 be pulled from the system?

11 **A. Yes.**

12 Q. Okay. Then we're going to continue. Then it
13 says "or." And so now we're going to go to
14 something different. "...any voter that has
15 been removed or deleted from voter roles
16 between..." the two dates.

17 And so let me ask you: Is that a canned
18 report?

19 **A. I'm not sure.**

20 Q. And, again, you would need to look at the
21 system interface to know that?

22 **A. Yes.**

23 Q. But could that report be pulled from the system
24 even if it's not canned?

25 **A. Yes.**

1 STATE OF INDIANA)
2) SS:
3 COUNTY OF JOHNSON)
4

5 CERTIFICATE
6

7 I, Valerie Fillenwarth, RPR, a Notary
8 Public in and for the County of Johnson, State
9 of Indiana, maintaining an office in Johnson
10 County, Indiana, do hereby certify the
11 following:

12

13 That the witness herein, GREGORY
14 ROCKSTROH, was first duly sworn to tell the
15 truth, the whole truth and nothing but the
16 truth in the foregoing deposition;

17

18 That all testimony was taken down in
19 stenographic notes and afterward reduced to
20 typewritten form under my direction and then
21 presented to counsel for the purpose of
22 obtaining the deponent's signature;

23

24 That I recorded and transcribed any and
25 all objections made by counsel and the reasons

1 therefore; and

2

3 That I am not a relative or employee,
4 attorney or counsel of any of the parties, nor
5 a relative or employee of such attorney or
6 counsel, nor am I financially interested in
7 this action.

8

9 IN WITNESS HEREOF, I have hereunto set my
10 hand and affixed my Notarial Seal this 29th day
11 of March 2023.

12

13

14

15 Valerie Fillenwarth,

16 Valerie Fillenwarth, RPR

17 Notary Public

18 (Electronically signed)

19

20

21

22

23 Commission Number: NP0669434

24 County of Residence: Johnson

25 My Commission Expires on: June 22, 2023

Respectfully submitted,

GRAVES GARRETT, LLC

/s/ Edward D. Greim

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